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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No.

PEGGY J. CONNOR, ET AL., *Appellants,*

v.

WILLIAM L. WALLER, Governor of Mississippi, ET AL.

On Appeal from the United States District Court for the Southern District of Mississippi (Three-Judge Court)

JURISDICTIONAL STATEMENT

This is an appeal by Black voters in Mississippi from the judgment of the United States District Court for the Southern District of Mississippi (three-judge court) sustaining the legislative apportionment of both houses of the Mississippi Legislature enacted by the State legislature in 1975, House Bill 1290 (House plan) and Senate Bill 2976 (Senate plan), 1975 Reg. Sess.* These enactments (a) in the State Senate provide districts identical to those ordered by the District Court in 1971, and (b) in the State House modify the 1971 District Court plan only in three

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* Attached as Appendices H and I.

House districts. Plaintiffs contended below and contend here that (1) at-large voting in the multi-member, floterial, and countywide districts unconstitutionally minimizes and cancels out Black voting strength, and (2) that the districts are unconstitutionally malapportioned and fail to provide the greatest practicable equality of population among the districts.

OPINIONS BELOW

The opinion of the three-judge District Court entered on May 20, 1975, is unreported and is attached herein as Appendix A.

Prior to the decision below, the District Court struck down the 1962 and 1966 state legislative redistricting plans for malapportionment, and ordered into effect a court-ordered plan for the 1967 state legislative elections, *Connor* v. *Johnson*, 256 F. Supp. 962 (S.D. Miss. 1966); 265 F. Supp. 492 (S.D. Miss. 1967). Subsequently, the District Court struck down the 1971 state legislative redistricting for malapportionment, and ordered a court-ordered plan based largely on multi-member and floterial districts for the 1971 state legislative elections, *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971).

On appeal, this Court granted interim relief pending appeal and instructed the District Court, absent insurmountable difficulties, to devise a single-member district plan for Hinds County, the State's most populous county, 402 U.S. 690 (1971). The District Court found that lack of adequate Census data and the proximity of the 1971 elections created insurmountable difficulties to drawing single-member Hinds County legislative districts for the 1971 elections, 330 F. Supp. 521, and a subsequent application for fur-

ther relief from this Court was denied, 403 U.S. 928. On January 24, 1972, this Court vacated the judgment of the District Court, except insofar as it applied to the 1971 state legislative elections, and remanded the case to the District Court for further proceedings consistent with its opinion, including the establishment of single-member districts for Hinds, Harrison, and Jackson Counties, *Connor* v. *Williams*, 404 U.S. 549.

JURISDICTION

1. Plaintiffs, who are eight Black Mississippi registered voters and an unincorporated association, the Mississippi Freedom Democratic Party, initially filed this action on behalf of themselves and all others similarly situated in the United States District Court for the Southern District of Mississippi on October 19, 1965. The defendants are the members of the Mississippi State Board of Election Commissioners, consisting of the Governor, the Attorney General, and the Secretary of State, and the presiding officers of the Mississippi House of Representatives and the Mississippi Senate. The original complaint sought reapportionment of the Mississippi Legislature and redistricting of the Congressional districts in accordance with Fourteenth and Fifteenth Amendment requirements. Jurisdiction was based on 28 U.S.C. §§ 1343, 2201 and 2202, 2281 et seq., and 42 U.S.C. §§ 1983 and 1988, and article IV, § 4, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

2. Pursuant to an order of the District Court, plaintiffs on April 15, 1975, filed an amended complaint alleging that the 1975 legislative redistricting plan enacted by the Mississippi Legislature, H.B.

1290 and S.B. 2976, denied them rights secured by the Fourteenth and Fifteenth Amendments to the United States Constitution, and 42 U.S.C. §§ 1971, 1973 et seq., and 1983. Jurisdiction was based on 28 U.S.C. §§ 1331, 1343, and 2281, and 42 U.S.C. §§ 1971(d), 1973c, and 1973j(f). The judgment now appealed from was entered on a legislative reapportionment plan submitted by State officials on April 24, 1975, pursuant to jurisdiction retained by the District Court following its 1971 judgment.

3. The judgment sought to be reviewed was filed May 22, 1975, and the Notice of Appeal was filed May 22, 1975, Appendices B and C attached.

4. Jurisdiction of this appeal is conferred by 28 U.S.C. § 1253.

5. The following cases sustain the jurisdiction of this Court: *Baker* v. *Carr,* 369 U.S. 186 (1962); *Reynolds* v. *Sims,* 377 U.S. 533 (1964); *White* v. *Regester,* 412 U.S. 755 (1973); *Chapman* v. *Meier,* —— U.S. ——, 42 L.Ed.2d 766 (1975).

QUESTIONS PRESENTED

1. Whether a legislative reapportionment plan in which 89 percent of the membership of the Mississippi House and 63 percent of the membership of the Mississippi Senate are elected from multi-member and floterial districts in which (a) Black majority counties arbitrarily are combined with more populous white majority counties in district-wide majorities, and (b) substantial Black population concentrations within counties are submerged in at-large countywide voting, in the presence of a prior history of racial discrimination affecting voting, unconstitutionally

minimizes, dilutes, and cancels out Black voting strength.

2. Whether a legislative reapportionment plan containing floterial districts, multi-member districts, and single-member districts in which floterial districts create deviations from population equality in the House plan of 62.963 percent and in the Senate plan of 20.292 percent, and which, apart from the floterial districts, contains admitted deviations from population equality in the House plan of 19.729 percent and in the Senate plan of 18,903 percent, and in which a majority of the districts in both houses deviate from population equality by more than 5 percent, is unconstitutionally malapportioned when the proof shows that:

(a) The Mississippi Legislature rejected a plan which kept county boundaries intact and provided for more equality of population among the districts (14.7% and 12.8%) in favor of the prior court-ordered plan which provided less equality of population among the districts; and

(b) There are literally hundreds of possible alternatives which would have kept county boundaries intact and provided greater equality of population among the districts.

3. Whether the District Court erred in refusing to adopt and implement proposed legislative redistricting plans which would have provided single-member districts statewide with a total deviation from population equality of 5% or less as a remedy for dilution of Black voting strength present in multi-member and floterial districts and for malapportionment.

4. Whether appellants were denied a fair and impartial hearing in the District Court when the District Judges confused their role as an impartial tribunal with that of advocates for the Legislature's reapportionment plan.

STATEMENT OF THE CASE

A. Proceedings Below.

On January 24, 1972, this Court withheld final decision on the constitutionality of the District Court's 1971 plan as a permanent reapportionment plan for Mississippi on the ground that the District Court's deliberations were incomplete and "it would be preferable to have before us a final judgment with respect to the entire State." *Connor* v. *Williams,* 404 U.S. 549, 551-52. The Court noted that the District Court had retained jurisdiction of the question of the multi-member districts in Hinds, Harrison, and Jackson Counties and had indicated that it "expects to appoint a special master" as of January 1, 1972, "to take testimony and make findings" regarding the feasibility of single-member districts for Hinds, Harrison, and Jackson (330 F. Supp. at 519). This Court directed:

> "Such proceedings should go forward and be promptly concluded, for, as this Court has emphasized, 'when District Courts are forced to fashion apportionment plans, single-member districts are preferable to large multi-member districts as a general matter.' Connor v. Johnson, 402 U.S. 690, 692." 404 U.S. at 549.

On remand, no special master was appointed as directed, and no testimony was taken nor findings made

on the feasibility of devising single-member legislative districts for those counties.

The Mississippi Legislature in its 1973 Regular Session first enacted H.B. 446 and S.B. 1701, approved by the Governor on February 9, 1973, which conformed in all respects to the District Court's 1971 redistricting except that in the House plan, Hinds, Harrison, and Jackson and George Counties were converted into floterial districts, with some representatives elected by supervisors' districts and others district-wide, and in the Senate plan all five Hinds County senators were to be elected by supervisors' districts. On March 13, 1973, the District Court entered an Order for Plaintiffs to Show Cause at a hearing set for April 20 why H.B. 446 and S.B. 1701 should not be approved by the District Court. Subsequently, the Mississippi Legislature enacted and the Governor approved on April 6, 1973, H.B. 1389 and S.B. 2452, codified in Miss. Code Ann. §§ 5-1-1 and 5-1-3 (1972) (Cum. Supp. 1974) which superseded the prior acts. These April enactments abolished the House floterial districts and the Senate Hinds County districts of the prior acts and were virtually identical to and, in effect, adopted the District Court's 1971 redistricting plan. Plaintiffs filed their objections to H.B. 1389 and S.B. 2452 and counsel for both sides appeared for the April 20th show cause hearing, but even though the show cause order was not rescinded, no hearing was held. Subsequently, counsel for plaintiffs filed motions and wrote letters requesting a hearing on the 1973 legislation, but no hearing was held until February 7, 1975.

After the February 7 hearing, which was a trial on the merits on the 1973 legislation, new bills were in-

troduced and the Legislature enacted and the Governor approved on April 7 and 8, 1975, H.B. 1290 and S.B. 2976, at issue here. These 1975 enactments provide for multi-member, floterial, and single-member districts and are virtually identical to the 1971 court-ordered plan, except for House Districts 31 (Hinds), 45 (Harrison), and 46 (Jackson-George).

No single-member districts were established for those counties. In House District 31, Hinds County was converted into a floterial district, with two representatives to be elected at-large in countywide voting and two from each of five supervisors' districts. In House District 45, Harrison County also was converted into a floterial district, with two representatives to be elected at-large and one from each of five supervisors' districts. In House District 46, Jackson and George Counties, representatives were to be elected district-wide from Jackson and George Counties, but one representative was required to reside in each of the five supervisors' districts of Jackson County, and a sixth was required to reside in George County. S.B. 2976, the Senate plan, made no changes from the 1971 District Court plan.

A final trial was held on May 7, 1975. The State presented no witnesses in support of the plan or documentary evidence except for the acts themselves and committee reports. On May 20, 1975, the District Court sustained H.B. 1290 and S.B. 2976. See Appendix A, attached.

B. Dilution.

According to the 1970 Census, Mississippi has 2,216,912 persons, of whom 1,393,203 are white (62.85

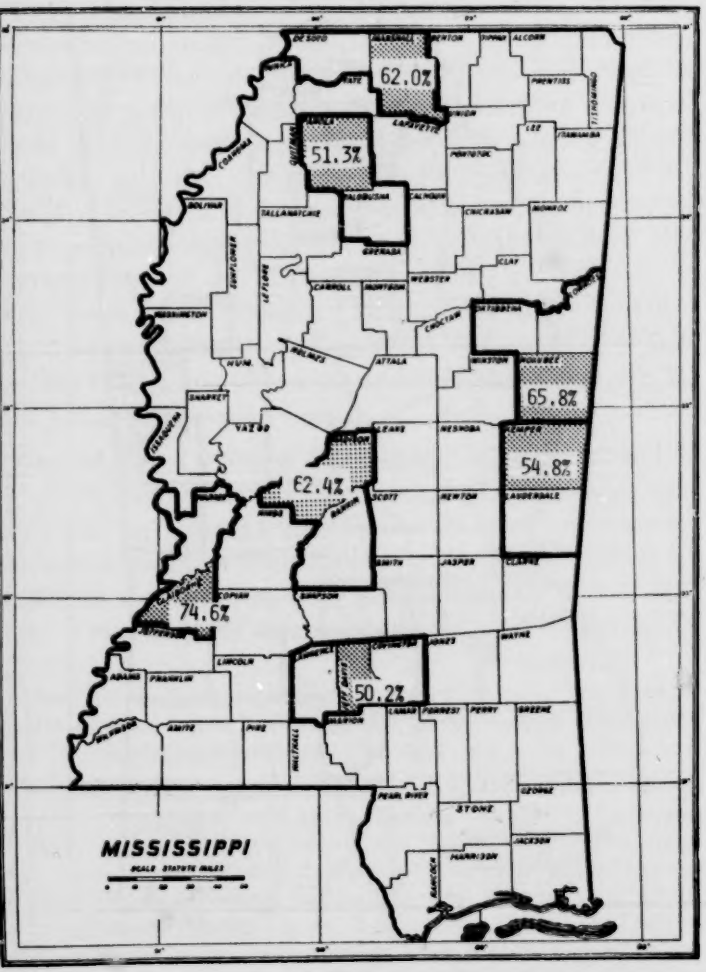
percent), 815,770 are Negro (36.80 percent), and 7,859 are of other races (0.35 percent). Mississippi has proportionately more Black people than any other state in the South or the United States, but fewer Black legislators than any other Southern state. From 1900 to present, only one Black legislator has been elected to the 122-member Mississippi House of Representatives (Tr. 46); the 52-member Mississippi Senate has been, and continues to be, all-white (id.). No Black candidate for the Mississippi Legislature has ever since 1900 been nominated in a party primary (id.).

Under the House plan, H.B. 1290, 89 percent of the entire membership of the Mississippi House of Representatives, 109 of the 122 members, are elected from 33 multi-member and floterial districts in which two or more members are elected from a single district. Under the Senate plan, S.B. 2976, 63 percent of the entire membership of the Mississippi Senate, 33 of the 52 members, are elected from 14 multi-member and floterial districts. These acts, in effect, codify the 1971 court-ordered redistricting plan which this Court left standing for the 1971 state legislative elections, except for the creation of floterial districts in House Districts 31 and 45, and additional residency requirements in House District 46. Of the 29 Black candidates who ran for the Mississippi House and Senate in 1971, 28 were defeated (Ex. P-5). Of the 28 Black legislative candidates who were defeated, 24 were required to run in multi-member and floterial districts (id.).

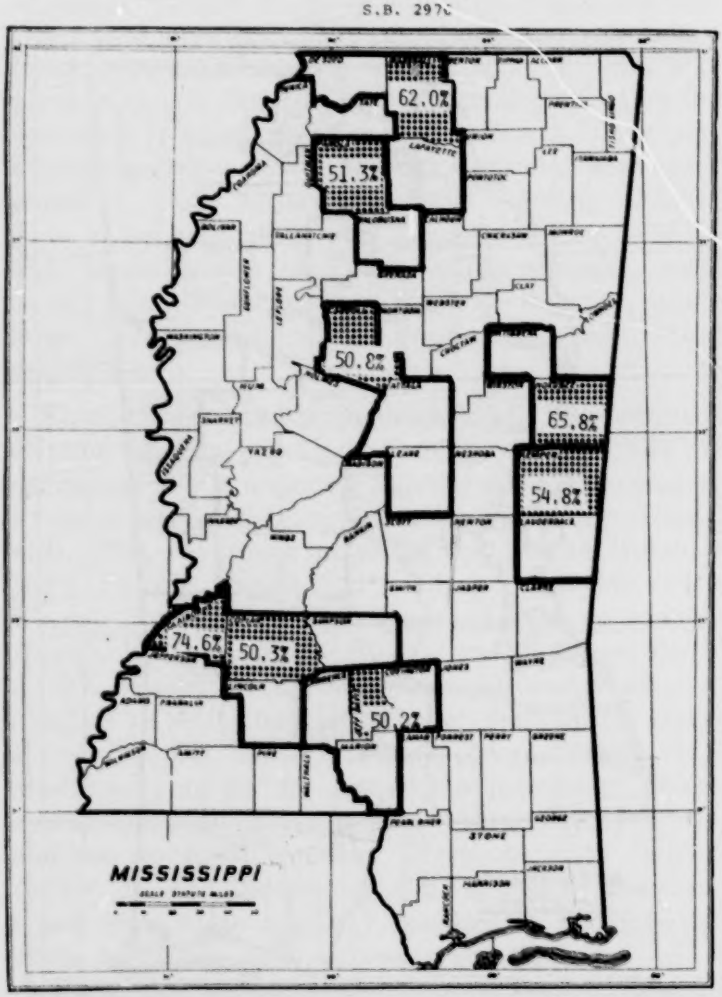
These districts are, except for subdistrict seats in House Districts 31 and 45, based entirely on the county unit system in which legislators are elected countywide or district-wide from districts comprised

of whole counties or combinations of whole counties. H.B. 1290 and S.B. 2976 minimize and cancel out Black voting strength by (1) arbitrarily combining Black majority counties with sufficient population for separate representation (or with sufficient Black population to create Black majority districts) with more populous white majority counties creating district-wide white majorities; and (2) submerging substantial concentrations of Black voting strength, sufficiently large to form Black majority districts, in at-large, countywide white population and voting majorities.

First, the attached maps dramatically illustrate the dilution of Black voting strength accomplished by combining Black majority counties with white majority counties for district-wide white majorities. Under H.B. 1290, the Black majority counties of Marshall (62% Black), Panola, (51% Black), Madison (62% Black), Noxubee (65.8% Black), Claiborne (74.6% Black), Kemper (54.8% Black), and Jefferson Davis (50.2% Black) all are combined with white majority counties in white majority House districts. Of these, Marshall (pop. 24,027), Panola (pop. 26,829), and Madison (pop. 29,737) exceed the population of the average size district (18,171). Under S.B. 2976, in addition to these counties, Black majority Carroll (50.8% Black) and Copiah (50.3% Black) are combined with white majority counties in district-wide white majorities. See Appendix D, attached.



Map showing House districts in H.B. 1290 in which Black majority counties (shaded, with percent Black) are combined with more populous white majority counties to create district-wide white majorities.



Map showing Senate districts in S.B. 2976 in which Black majority counties (shaded, with percent Black) are combined with more populous white majority counties to create district-wide white majorities.

Dr. Gordon G. Henderson, Professor of Political Science and Director of the Computer Center at Tougaloo College, testified at the May 7 trial that these combinations are completely arbitrary, and that in every case there are many other redistricting arrangements which would have avoided submerging Black majority counties in white majority districts (Tr. 99-153).[1] Many of these possible alternatives would be more compact (including fewer counties) than the districts created by H.B. 1290 and S.B. 2976, and in most cases the possible alternative arrangements would have variances from population equality which are less than those provided under H.B. 1290 and S.B. 2976 (id.).

Second, there are ten Mississippi counties in which the Black population concentration alone exceeds the norm for an average size House district,[2] and many additional counties with sufficient Black population to constitute a Black majority single-member House district. Yet many of these counties have countywide

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[1] These alternatives are set out in Exs. P-28 and P-29, marked for identification but not admitted in evidence because they duplicated Dr. Henderson's testimony (Tr. 213). See p. 28, *infra*.

[2] These are (with total Black population in parentheses): Hinds (84,064); Washington (38,460); Bolivar (30,338); Coahoma (26,013); Leflore (24,374); Sunflower (23,261); Harrison (22,743); Lauderdale (20,630); Madison (18,548), and Warren (18,355). Hinds, Harrison, Lauderdale, and Warren have white population majorities. At-large, countywide voting in Leflore County was held to unconstitutionally dilute Black voting strength in *Moore* v. *Leflore County Bd. of Election Comm'rs*, 361 F. Supp. 609, 613-14 (N.D. Miss. 1973), aff'd, 502 F.2d 621, 627 (5th Cir. 1974). But in House District 17 of H.B. 1290, Leflore, with Carroll, elects three representatives district-wide in a large multimember district. All of these counties currently have white countywide voting majorities. (Exs. P-30, 31).

white population and voting majorities. For example, Hinds County has more Black people than any other county in the state, 84,064 Black persons, yet whites are in the majority (60.75 percent) and Blacks in the minority (39.10 percent) countywide. At-large, countywide voting for two House seats (House District 31) and five Senate seats (Senate District 22) completely submerges and cancels out the voting strength of this substantial Black population concentration.

Rims Barber, Associate Director of Delta Ministry, who has analyzed Mississippi elections since 1967, testified that based on Mississippi State University projections of the racial voting age population for each of these legislative districts,[3] together with evidence of disproportionately lower Black voter registration and turnout as a result of past discrimination, under H.B. 1290 and S.B. 2976 there is only one district in which Black voters have an opportunity to elect legislators of their choice (Tr. 219-40, Exs. P-30, P-31). This is House District 16, currently held by the State's only Black legislator (id.).

C. The Denial of Equal Access.

The almost complete exclusion of Blacks from legislative office in Mississippi is not the result of defeat at the polls in non-discriminatory and fairly run elections, but rather is the product of discriminatory electoral mechanisms and past discrimination denying to Blacks in Mississippi equal access to the political process.

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[3] E. Bryant and S. El-Attar, *Population of Mississippi Legislative and Congressional Districts 1970 and Projections to 1975* (Mississippi State University 1973).

Mississippi election law currently requires a majority vote to win nomination in a party primary, Miss. Code Ann. § 23-3-69 (1972); and requires full-slate voting and prohibits single-shot voting, Miss. Code Ann. § 3110 (1956 Recomp.). In addition, H.B. 1290 and S.B. 2976 limit legislative candidates to a specified post on the ballot. In combination, these mechanisms enhance the opportunities for discrimination and make it more difficult for Black voters to elect legislators of their choice, particularly in districts in which Black voters do not constitute a voting majority (Sweeney dep., Ex. P-6, pp. 29-31).

Prior to the passage of the Voting Rights Act of 1965, eligible Black citizens in Mississippi were almost completely disfranchised by the discriminatory constitutional interpretation and literacy tests[4] and by the poll tax requirement.[5] In addition, Blacks were excluded from party affairs by the adoption in 1903 of the "white primary" rule by the State Democratic

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[4] Miss. Const., art. 12, § 244; Miss. Code Ann. § 3213 (1956 Recomp.); Miss. Code Ann. § 23-5-85 (1972), suspended by operation of 42 U.S.C. § 1973b. See *United States* v. *Mississippi*, 380 U.S. 128 (1965), on remand, 256 F. Supp. 344 (S.D. Miss. 1966); U.S. Commission on Civil Rights, *Voting in Mississippi* 4-6, 8-11, 13-18 (1965).

Prior to the enactment of the Voting Rights Act, only 28,500 Blacks, or 6.7 percent of those eligible, were registered to vote, as opposed to 69.9 percent of the eligible whites. United States Commission on Civil Rights, *Political Participation* 13 (1968).

[5] Miss. Const., art. 12, §§ 241, 243; Miss. Code Ann. §§ 3160, 3235 (1956 Recomp.), held unconstitutional in *United States* v. *Mississippi*, 11 R.R.L.Rep. 837 (S.D. Miss. 1966). See *Ratliff* v. *Beale*, 74 Miss. 247, 268, 20 So. 865, 869 (1896); *Voting in Mississippi* 3-4, 18-19.

Executive Committee.[6] After the "white primary" was declared unconstitutional, Blacks were excluded from participation in party affairs by Miss. Code Ann. § 3129 (1956 Recomp.), which conditions participation in party primaries on adherence to party principles, and by the successive adoption by Mississippi Democratic and Republican party organizations up until 1972 of principles espousing segregation of the races.[7]

Fearing that the franchise restrictions designed to disfranchise Black citizens might be struck down by the Federal courts, the Mississippi Constitutional Convention of 1890 also intentionally gerrymandered the districts for election of members of the Mississippi Legislature by increasing the number of representatives and alloting the increase to white counties, by establishing three constitutional apportionment divisions which minimized representation from Black counties, and by carving white majority districts out of Black majority counties.[8]

After the passage of the Voting Rights Act, the United States Attorney General was required to dispatch Federal registrars (examiners) to 34 Mississippi counties, more than in any other Southern state, to enforce the guarantees of the Fifteenth Amendment (Pottinger dep., Ex. P-9, pp. 6-9). In addition,

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[6] *Voting in Mississippi* 6-8; O. D. Weeks, *The White Primary*, 8 Miss. L.J. 135 (1935); A. D. Kirwan, *Revolt of the Rednecks* 129-31 (1965).

[7] *Voting in Mississippi*, 7-8; *Political Participation*, 145-46.

[8] A. D. Kirwan, *Apportionment in the Mississippi Constitution of 1890*, 14 J. So. History 234 (1948); Leon A. Wilber, *Reapportionment of the Mississippi Legislature* 1-2 (1961).

Federal observers have been required to observe municipal, county, and state elections in most of these counties to protect Fifteenth Amendment rights and to insure that the votes of Black voters are counted and included in the election returns (id., pp. 12-22).

Moreover, since 1965, the Mississippi Legislature has continually demonstrated its unresponsiveness to the interests of the Black electorate and has passed numerous statutes designed to prevent the election of Black candidates to public office, including (three times) authorizing changes from district to at-large election of county supervisors, increasing the qualifying requirements for independent candidates, most of whom since 1965 have been Black, switching from election to appointment of county officials, making voter registration more difficult by requiring burdensome and harassing questions, and enacting the "open primary" law which abolished party primaries and required a majority, rather than a plurality as under present law, to win elective office.[9] All of these discriminatory post-1965 election law changes, except the 1972 voter registration form, were objected to by the United States Attorney General under the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, as racially discriminatory in purpose and/or effect (Pottinger dep., Ex. P-9, Exs. A,B,J).

Even after 1965, Blacks continue to be excluded from party affairs. The national convention delegations of the predominantly white, State-recognized Mississippi Democratic Party were unseated and excluded from the Democratic National Conventions in

[9] These statutes are collected in Appendix E, attached.

1968 and 1972 for exclusion of Blacks from precinct meetings, county conventions, and state conventions and for failing to adhere to the delegate selection guidelines of the National Democratic Party. See, e.g., *Riddell* v. *National Democratic Party,* 508 F.2d 770 (5th Cir. 1975). In addition, State officials have attempted to outlaw and the Mississippi Secretary of State, a defendant here, has unconstitutionally refused to register under state law the Loyalist Democratic Party faction recognized by the National Democratic Party. *Riddell, supra.*

The legacy of this immediate past history of racial discrimination affecting voting and participation in the political process continues to the present day. There are no Black State elected officials. Disproportionately few Blacks in Mississippi hold public office at the legislative level (1 out of 174), at the county supervisors level (10 out of 410), or at the municipal level (61 out of approximately 1,350).[10] Disproportionately fewer eligible Blacks than whites are registered to vote (66 percent of the eligible Blacks as opposed to 76 percent of the eligible whites) [11] or turn out at the polls on election day to cast ballots (Tr. 222-31).

In addition, the Mississippi Legislature has demonstrated its unresponsiveness to the needs and interests of the Black community by refusing to consider or pass bills introduced by the State's only Black legislator designed to serve the needs of the Black com-

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[10] Joint Center for Political Studies, *National Roster of Black Elected Officials,* Vol. 4, pp. 117-28 (April, 1974).

[11] Institute of Politics in Mississippi, *Voter Registration in Mississippi,* p. 2 (March, 1971) (Ex. P-10, Barber dep., Ex. 2).

munity, including a compulsory school attendance law[12] and a bill to provide assistance to illiterate voters at the polls.[13] Moreover, the Legislature has passed, and continues to pass, racial legislation and resolutions designed to block public school desegregation, to provide tuition grants and loans to whites attending segregated academies established as an alternative to public school desegregation, and to impede Black voting.[14]

D. Malapportionment.

The norm, or average size district for the Mississippi House is 18,171, and for the Mississippi Senate is 42,633. Exclusive of floterial districts, described below, the House districts fail to provide substantial equality of population by variances ranging from +9.906% (District 3, 3 reps.) to —9.823% (District 18, 2 reps.), for a total deviation in the House of 19.729%[15] Eleven representatives, almost 10% of the membership of the House, are elected from five districts which vary from population equality by more than 9% plus and minus. Of the 46 House districts created, 23 districts electing 52% of the members of the House, 63 out of 122 members, vary from popula-

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[12] Ex. P-16: H.B. 339, 1971 Reg. Sess., died in House; H.B. 515, 1972 Reg. Sess., died in House, H.B. 817, 1973 Reg. Sess., died in House; H.B. 204, 1974 Reg. Sess., died in House.

[13] Id: H.B. 509, 1972 Reg. Sess., died in House; H.B. 867, 1973 Reg. Sess., died in House.

[14] Appendix E, attached.

[15] The variances from population equality for the House and Senate districts, exclusive of new House Districts 31 and 45, are found in the 1971 opinion of the District Court, 330 F.Supp. at 509-16.

tion equality in excess of 5% plus and minus.[16] The ratio of the largest to the smallest district is 1.219 to 1.

Exclusive of floterial districts, described below, the Senate districts fail to provide substantial equality of population by variances ranging from +9.584% (District 29, 1 senator) to —9.319% (District 19, 2 senators), for a total deviation in the Senate of 18.903%.[17] Three districts, electing four senators, vary from the norm by more than 9% plus and minus. Of the 33 Senate districts, 18 districts electing 50% of the members of the Senate, 26 out of 52 members, vary from population equality in excess of 5% plus and minus.[18] The ratio of the largest to the smallest district is 1.208 to 1.

In 1973 the Mississippi Legislature considered but rejected redistricting plans recommended by its own Interim Study Committee on Legislative Reapportionment which would have provided more equality of population among the districts without breaking any county lines by a total deviation in the House of 14.7% and in the Senate of 12.8% (Ex. P-2).[19] At the trial on May 7, the defendants presented no witnesses and gave no justification why the Legislature rejected

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[16] Id.

[17] Id.

[18] Id.

[19] The recommendations of the Interim Study Committee were introduced in the House as H. B. 446 and in the Senate as S. B. 1701, but died in the respective committees. The committee recommendations which were eventually passed in 1973 as H. B. 446 and S. B. 1701 were committee substitutes which generally followed the 1971 court-ordered plan as previously indicated, *supra*, Section A, Proceedings Below.

its own recommended plan providing more equality of population among the districts in favor of the 1971 District Court plan providng less equality of population.

Further, a computer analysis of legislative reapportionment performed in 1973 by Dr. Gordon G. Henderson, and made available to defendants on November 1, 1974 (Henderson dep., Ex. P-8), but ignored by the Legislature in its deliberations, shows that even keeping county lines intact and keeping combinations of counties to a minimum, a Mississippi legislative redistricting can be obtained which minimizes population variances to a deviation of 10.62% in the House and 10.51% in the Senate (Tr. 81-97). Dr. Henderson testified that based on a computer analysis of all the possible combinations of counties for legislative redistricting in Mississippi, there are "at least several hundred" possible alternatives which would keep county boundaries intact and still provide more equality of population than H.B. 1290 and S.B. 2976 (Tr. 97).

In addition, the nine floterial districts of H.B. 1290 and the one floterial district of S.B. 2976 create even greater variances from population equality, for a total deviation in the House plan of at least 62.963% and in the Senate plan of 20.292%. For example, in House District 4, Lee County—with population more than twice the norm (46,148)—has two direct representatives, but Monroe County—with population almost twice the norm (34,043, only 2,299 less than twice the norm)—has only one direct representative, and Itawamba County—with population 1,324 less than the norm (16,847)—also, like Monroe, has one direct

representative. One representative is elected distr
wide by all three counties (district pop. of 97,03
Thus, Itawamba, which is already overrepresen
with one direct representative, also is given a 1/
share in the election of floterial representative (
847/97,038), increasing Itawamba's overrepresen
tion to a variance of —21.00%. Monroe, which is
verely underrepresented with only one direct re
sentative, is given only a 1/3rd share in the elec
of the floater (34,043/97,038), thus retaining subst
tial underrepresentation by a variance of +38.6
Similar extremes are present in the floterial distr
created in House Districts 1, 11, 23, 25, 28, 35,
45,[20] electing with House District 4 a total of 27
resentatives, 22% of the membership of the Ho
and Senate District 27, electing three senators. Sv
ney dep., Ex. P-6, pp. 11ff., Ex. 1. See Appendi
attached.

E. Plaintiffs' Proposed Alternative Plans.

Plaintiffs proposed to the District Court as a r
edy for the dilution of Black voting strength and
apportionment present in H.B. 1290 and S.B. 2
two plans providing single-member legislative
tricts statewide for both houses of the Mississ
Legislature. The first plan was drawn by Dr. D
Valinsky, Chairman and Professor of the Statis
Department, Bernard M. Baruch College, City
versity of New York, who drew the Alabama sin
member redistricting plan approved by this Cou
Amos v. *Sims*, 409 U.S. 942 (1972). The Valinsky

[20] The District Court retained jurisdiction to correct the
apportionment of Harrison County supervisors' districts,
are the floterial subdistricts for House District 45 (Mem. Op
26-29, 67).

(Exs. P-19, P-20) provides single-member legislative districts for both the House and Senate statewide, and no district has a variance from population equality greater than 3.09%. The House districts range from +3.09% to —2.30%, for a total deviation of only 5.39%. The Senate districts range from +1.66% to —1.73%, for a total deviation of only 3.39%. The variances in the Valinsky plan were justified by the necessity of adhering to county boundaries, where possible, and political subdivision and Census enumeration district boundary lines. The center of each proposed district was randomly determined, and the districts drawn without regard to race or the location of racial concentrations. Ex. P-17, Valinsky testimony, pp. 64-140.

The second single-member district plan was presented by Henry J. Kirksey, a cartographer who is one of the plaintiffs in this case (Ex. P-25, Kirksey dep.). The Kirksey plan (Exs. P-33, P-34) also provides single-member districts statewide for both houses, and no district has a variance from population equality greater than 2.96%. The House districts range from +2.96% to —2.79%, for a total deviation of only 5.75%. The Senate districts range from +2.39% to —2.62%, for a total deviation of 5.01%. The variances of the Kirksey plan also were justified by adhering to county boundaries, where possible, and to political subdivision and Census enumeration district boundaries. Mr. Kirksey, in drawing his plan, located concentrations of Black population, and drew his boundaries in such a way as to avoid fragmenting or dispersing these Black population concentrations.[21]

[21] Mr. Kirksey testified that under his plan Black voters would be able to elect legislators of their choice in a "dozen or more" House districts and "four or five" Senate districts (Tr. 284).

No objections were lodged by the defendants to the accuracy of the population statistics contained in either the Valinsky or Kirksey plans; in fact the defendants admitted their accuracy in their answer (Answer to Amended Complaint, ¶¶43(a) and (b)). Their only objection was that the single-member plans in some instances broke county lines.

F. State Policy.

From 1890 to 1962 there was a firmly established State policy in Mississippi providing for subdistricting of counties into single-member districts to provide for more effective representation in the Legislature, and pursuant to that policy at least 10 counties were subdistricted for the election of 24 members to the Mississippi House of Representatives. See Miss. Const., art. 13, § 254, ¶¶12, 13, 14, 15 (1890); Miss. Code Ann. § 3326 (1956 Recomp.). This firmly established state policy providing for representation in the Legislature of "a city" or "part of a county" is codified in Miss. Code Ann. § 23-5-175 (1972) which provides:

> "When a city or part of a county is entitled to separate representation in the legislature, the commissioners of election shall prepare for the election, and shall receive and canvass the returns, declare the result, and transmit it to the secretary of state, and act in all respects as in other elections."

This state policy was abrogated, not by the Mississippi Legislature, but by the District Court in the 1967 court-ordered legislative redistricting plan. *Connor* v. *Johnson*, 265 F.Supp. 492 (S.D. Miss. 1967). In that plan, the District Court ordered representa-

ion based exclusively on county units, without any ubdividing of counties, and the county unit system as remained in effect, pursuant to the orders of the District Court, down to the present time.

Moreover, State policy, and all prior Mississippi egislative reapportionments, have allowed the viola- ion of county lines in the formation of single-mem- er, multi-member, and floterial districts where neces- ary in order to surmount undue population varia- ions.[22] In addition, Mississippi does have administra- ive, political, and electoral subdivisions, such as levee istricts, county line school districts, and consolidated chool districts which do cross county lines and subdi- ide county areas (Barber dep., Ex. P-10, pp. 83-90, Exs. 7, 8). There is no Mississippi constitutional or tatutory prohibition against breaking county lines for egislative districts in order to achieve compliance ith one-person, one-vote principles.

The legislative committee reports filed with H.B. 290 and S.B. 2976 contend that preservation of the ounty unit system of representation, basing repre- entation on whole counties or combinations of coun- ies, is a desirable objective consistent with past policy. Yet the Legislature's own plans for representation in he House violate this alleged policy by providing flo- erial subdistricts in Hinds and Harrison Counties. Further, this county unit system was repudiated by Governor William L. Waller himself, the lead defen- ant in this case, at a press conference held on May 7,

[22] Indeed, under H.B. 1290 and S.B. 2976, county lines are rossed in 29 out of 46 House districts (63%) and in 25 out of 3 Senate districts (76%) in which counties are combined in an fort to obtain population equality. See Appendices H and I, ttached.

1975, in which he indicated his view that single-member legislative districts in Mississippi were inevitable and preferable even "if it takes a smaller geographical district that does cross county lines, then I'm personally in favor of the smaller geographical unit."[23]

G. The District Court Hearings.

Having refused to appoint a special master to formulate single-member district plans for populous counties and having refused to hold hearings promptly, contrary to the directions of this Court, the District Court on February 7, 1975 finally held a hearing on the Legislature's 1973 codification of the 1971 court-ordered plan. At the February 7 hearing, the District Court indicated that the Legislature should act in some fashion to modify the 1971 court-ordered plan. (Transcript of Feb. 7, 1975 hearing, Ex. P-17). Following that hearing the Legislature accordingly enacted the very minor modifications noted above, whereupon the District Court dismissed, with prejudice, plaintiffs' ten-year cause of action to secure constitutionally apportioned single-member districts and directed plaintiffs to file a new amended complaint to challenge the apportionment plan.[24] The only conceivable purpose for this extraordinary procedural approach was to attempt to avoid the impact of this Court's recent decision in *Chapman* v. *Meier,* ____ U.S. ____, 42 L.Ed. 2d 766 (1975), by making the 1975

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[23] The authenticated transcript of Gov. Waller's May 7, 1975 press conference was added to the record by motion to supplement the record, which was granted (Mem. Op., p. 66), and is attached herein as Appendix G.

[24] Order of April 11, 1975. Upon this dismissal with prejudice, plaintiffs immediately filed a Motion to Amend the Decree. The District Court has not disposed of this motion.

enactments appear procedurally as sua sponte legislative, rather than court-inspired, judgments.[25]

The transcript of the May 7, 1975, District Court trial itself shows that the District Court continued to act not as an impartial tribunal, but as an advocate for the Legislature's legislative reapportionment plan. Every action of the District Court indicates that it approached this case with a closed mind, intent upon sustaining the Legislature's plan, regardless of the evidence presented.

For example, the District Court excluded from admission in evidence a stipulation of counsel (Ex. P-1, for identification), and threatened counsel for the plaintiffs with contempt when he tried to explain that the stipulation was, in essence, an answer to plaintiffs' request for admissions under Rule 36, F.R. Civ. P. (Tr. 25-27). The exhibits to plaintiffs' request for admissions showing prior rejection of more equal districts and denial of equal access were excluded from evidence on the ground that "we are not going to clutter up the record with this three inch stack of copies of that which is thus available" (Tr. 34, 36); the District Court denied a motion to have them marked for identification to preserve the record on appeal (Tr. 35).

For example, during the direct examination of plaintiffs' first expert witness, Dr. Gordon G. Henderson, the presiding judge, Circuit Judge J. P. Coleman, a former Governor of Mississippi, interrupted

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[25] In his opinion, Judge Coleman noted "[w]e thus began with a fresh record, shorn of the papers accumulated during the previous ten years . . . papers approaching two feet in depth." Appendix A, p. 5a.

the direct examination and, acting as counsel for the defendants, subjected Dr. Henderson to intense cross-examination for approximately 35 pages of the transcript (Tr., pp. 100-135) to minimize the impact of his testimony. Judge Coleman then excluded from evidence a written statement of Dr. Henderson's data and conclusions (Exs. P-28, P-29, for identification) on the ground that "it accentuates some of the evidence [favorable to the plaintiffs] at the expense of other portions of the evidence [Judge Coleman's cross examination], all of which has been heard and ought to be weighed together" (Tr. 218).

This complete lack of impartiality is further demonstrated by the opinion of the District Court. The District Court ignored undisputed facts which established plaintiffs' case, and made every finding of fact favorable to the defendants regardless of the evidence. Thus, the District Court completely ignored and disregarded: (1) Extensive evidence showing that the Mississippi Legislature has made substantial efforts in the past ten years to deny Blacks equal access to the political process (Mem. Op., pp. 49-52; cf. Appendix E, attached);[28] (2) Dr. Henderson's testimony that Black majority counties with greater population than the norm for a House district are arbitrarily combined with white majority counties to submerge Black voting strength (Mem. Op., pp. 65-66; cf. Tr. 137-55); (3) Rev. Barber's testimony that based on 1975 voting age population projections and dispro-

[28] An identical listing of state statutes and judicial decisions, which are subject to judicial notice, and Section 5 objections to state legislation, authenticated by deposition of Hon. J. Stanley Pottinger, Assistant Attorney General, Civil Rights Division, U. S. Department of Justice (Ex. P-9), was attached to plaintiffs' post-trial supplemental memorandum filed with the District Court.

portionately lower Black registration, it is highly unlikely that Black voters can elect legislators of their choice in any House or Senate district except one (Mem. Op., pp. 54-60; cf. Tr. 219-39, Ex. P-31); and (4) the announcement of the Governor of Mississippi that single-member legislative districts are preferable to multi-member districts even "if it takes a smaller geographical district that does cross county lines" (Appendix G, attached) which the District Court admitted in evidence but gave "no evidentiary value" (Mem. Op., p. 66).

THE QUESTIONS ARE SUBSTANTIAL

The District Court's decision rejecting appellants' claims both of dilution of Black voting strength and malapportionment raises serious questions of conflict with this Court's prior decisions on both issues. The District Court's ruling that at-large voting in multi-member and floterial districts, given the past history of discrimination in Mississippi, does not minimize and cancel out Black voting strength, and its refusal to order single-member districts, directly conflict with this Court's prior rulings applicable both to court-ordered reapportionments, *Chapman* v. *Meier*, ____ U.S. ____, 42 L. Ed.2d 766 (1975); *Connor* v. *Williams*, 404 U.S. 549 (1972), and to legislatively enacted reapportionment plans, *White* v. *Regester*, 412 U.S. 755, 765-70 (1973); *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965).

Since the Legislature in the plan approved by the District Court failed to provide the greatest practicable equality of population among the districts, even keeping county lines intact, the District Court's judgment contravenes this Court's prior decisions in *Kil-*

garlin v. *Hill*, 386 U.S. 120 (1967); *Swann* v. *Adams*, 385 U.S. 440 (1967); and *Reynolds* v. *Sims*, 377 U.S. 533 (1964). Since these 1975 legislative acts, in essence, codify the 1971 District Court plan, the District Court's decision sustaining the excessive population variances of its own prior plan of at least 19.729% in the House and 18.903% in the Senate (excluding floterial districts) conflicts with this Court's opinion in *Chapman* v. *Meier, supra*, holding unconstitutional a deviation of 20.14% in a similarly court-ordered legislative redistricting plan.

I. The Use of Multi-Member Districts Under the Circumstances of This Case Unconstitutionally Operates to Minimize and Cancel Out Black Voting Strength.

This Court previously has held that multi-member legislative districts are not unconstitutional *per se*, *Whitcomb* v. *Chavis* 403 U.S. 124 (1971), but has held that their use constitutes an invidious discrimination where it can be shown that

> "designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial . . . elements of the voting population." *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965). Also, *Dallas County, Alabama* v. *Reese*, 43 U.S. L.W. 3611, 3612 (U.S. May 19, 1975) (No. 74-1077).

Here Black voting strength is unconstitutionally minimized and cancelled out. With a prior history of discrimination in voting, Black majority counties arbitrarily are combined with more populous white majority counties to create district-wide white majorities in the face of numerous alternatives which would not

submerge Black voting strength, *Sims* v. *Baggett*, 247 F. Supp. 96, 109 (M.D. Ala. 1965) (three-judge court); and at-large countywide voting submerges Black population concentrations, large enough for separate representation, in countywide white voting majorities, *White* v. *Regester*, 412 U.S. 755, 765-70 (1973); cf. *Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969).

The District Court failed here even to implement the mandate of this Court in *Connor* v. *Williams*, 404 U.S. 549 (1972), at least to provide single-member districts in the State's most populous counties, Hinds, Harrison, and Jackson. The District Court's approval of its own prior plan, with slight modifications as passed by the Legislature, without complying with this Court's mandate is sufficient grounds for reversal alone. Under the court-approved plan, two representatives and all five senators are elected from Hinds County, two representatives and all three senators are elected from Harrison County, and all six representatives (with George County) and two senators are elected from Jackson County, all in at-large countywide voting which dilutes the vote of substantial Black population concentrations, respectively of 84,064, 22,743, and 14,258 in those three counties.

The District Court erred in failing to recognize that plaintiffs had met their burden of proving that

> "the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *White* v. *Regester*, *supra*, 412 U.S. at 766; *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 149-50.

As in *White*, Black citizens have been almost completely excluded from legislative offices. In a State with the greatest percentage of Black population and 174 legislative seats, since 1900 only *one* Black has ever been elected to the State legislature. Eligible Black citizens have been disfranchised for more than 75 years by racial discrimination in voter registration, the poll tax requirement, and the "white primary." As in Texas, the majority vote requirement for party nomination, and the post or "place" rule embodied in these statutes, along with the anti-single shot voting law, all enhance the opportunity for discrimination and deprive Blacks of equal access to the political process. In the past, and under the present districts, legislators do not need the support of the Negro community to win elections, and there is ample evidence to demonstrate that the Mississippi Legislature has, even since 1965, not exhibited good-faith concern for the needs and aspirations of the Black community (App. E, attached). Moreover, Census statistics indicate that Blacks in Mississippi are characterized by poor housing, lower income, lower educational attainment, and a higher rate of unemployment than whites,[27] all of which restrict free and equal political participation, cf. *White* v. *Regester, supra,* 412 U.S. at 768.

This evidence compels the conclusion that Blacks in Mississippi are effectively removed from the political processes under multi-member districts which minimize and cancel out their voting strength in violation of the *White* v. *Regester* standards; and that single-member districts are required to remedy this past dis-

[27] U.S. Bureau of the Census, *General Social and Economic Characteristics, Mississippi,* PC(1)-C26 (1972).

crimination and to bring Mississippi Blacks into the full stream of political life of the State by encouraging registration, voting, and political participation.

> "No political, racial or other interest group has any constitutional right to be successful in its political activities. However, a State may not design a system that deprives such groups of a reasonable chance to be successful." *Graves* v. *Barnes*, 343 F. Supp. 704, 734 (W.D. Tex. 1972), aff'd in relevant part, rev'd in part, *White* v. *Regester, supra.*

In this factual context, it is no answer to say that Blacks have population majorities in eight senatorial districts and in 10 representative districts under the court-approved plan. (Mem. Op., pp. 54-60). The proper measure of dilution is not population, but actual voting strength. *White* v. *Regester, supra,* 412 U.S. at 769; cf. *Zimmer* v. *McKeithen,* 485 F.2d 1297, 1302-03 (5th Cir. 1973) (en banc). Blacks may constitute a population majority in a district, but because disproportionately fewer Blacks are of voting age or are registered to vote, Blacks may constitute a voting minority. Thus, of the eight Senate districts referred to by the District Court, Blacks in 1975 constitute a minority of the total voting age population in four, and do not have effective majority voting strength in any (Tr. 221-33, Ex. P-30). Similarly, of the ten House districts cited, Blacks in 1975 constitute a minority of the total voting age population in four, and have effective majority voting strength in only one (id.).

Indeed, there is ample reason to believe that Mississippi's preference for at-large voting is rooted in racial discrimination. Fearing that Blacks might gain

registered majorities in particular wards in certain Mississippi cities,[28] the Mississippi Legislature in 1962 switched from ward elections to at-large, citywide elections in municipal voting. Miss. Code Ann. § 21-3-7 (1972). After the passage of the Voting Rights Act of 1965, three times the Mississippi Legislature attempted to switch from supervisors' district elections to at-large, countywide elections for members of the county board of supervisors, the county governing board, and the changes were blocked under Section 5 of the Voting Rights Act on the ground that the change was racially discriminatory in purpose and effect (Pottinger dep., Ex. P-9, Exs. A, J). If at-large county supervisor elections in Mississippi are racially discriminatory and violate rights secured by the Voting Rights Act, then the same must be true for state legislative elections.

The approval by this Court of multi-member districts in *Mahan* v. *Howell,* 410 U.S. 315, modified, 411 U.S. 922 (1973), relied upon by the District Court, is not applicable here. No argument was made in *Mahan* that the multi-member districts at issue there diluted Black voting strength; and, as this Court recently has indicated, *Mahan* was based on a "singular combination of unique factors" justifying multi-member districts only "as an interim remedy in order to alleviate substantial underrepresentation of military personnel in an impending election," *Chapman* v. *Meier,* 42 L.Ed.2d 766, 779 (1975), a factor not present here.

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[28] *Stewart* v. *Waller,* Civil No. EC 73-42-S (N.D. Miss.) (stipulation of facts and documents).

II. The Legislative Districts Established by H. B. 1290 and S. B. 2976 Are Unconstitutionally Malapportioned and Fail to Provide the Greatest Practicable Equality of Population Among the Districts.

Reynolds v. *Sims*, 377 U.S. 533, 577 (1964), requires

> "that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."

While "a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering" and "to maintain the integrity of various political subdivisions," 377 U.S. at 581, 578, a desire merely to preserve county lines in a reapportionment plan, in and of itself, is not a sufficient justification for excessive population deviations. *Stevenson* v. *West*, 413 U.S. 902 (1973); *Kilgarlin* v. *Hill*, 386 U.S. 120 (1967).

> "Population is, of necessity, the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies." *Reynolds, supra*, 377 U.S. at 567.

Plaintiffs have demonstrated, but the District Court ignored the fact, that there are literally hundreds of alternatives which the Legislature might have chosen which would have maintained the integrity of county lines but which would have provided greater equality of population among the districts. Thus the Legislature rejected the recommendation of its own Interim Study Committee in 1973 providing deviations in the House of 14.7% and in the Senate of 12.8% in favor of the 1971 District Court plan providing variations, without considering the floterial districts, of 19.729%

in the House and 18.903% in the Senate. The Henderson programs show that the Legislature could have devised legislative reapportionment plans, without breaking any county lines, with population deviations as small as 10.62% in the House and 10.51% in the Senate, respectively nine and eight percentage points smaller than the plan approved by the District Court. These facts are sufficient to render H.B. 1290 and S.B. 2976 invalid for malapportionment. *Kilgarlin* v. *Hill, supra,* 386 U.S. at 124; *Swann* v. *Adams,* 385 U.S. 440, 445 (1967).

In addition, the District Court also completely ignored the fact that on the undisputed and uncontradicted testimony the floterial districts in the House and Senate plans create grossly malapportioned districts for total deviations of 62.963% in the House and 20.292% in the Senate. Floterial districts must be judged by the same standards applicable to other legislative districts, and reapportionment plans cannot meet *Reynolds* standards if population variances in the floterial districts are excessive. *Kilgarlin* v. *Martin,* 252 F. Supp. 404, 418-24 (S.D. Tex. 1966) (three-judge court), rev'd on other grounds sub nom. *Kilgarlin* v. *Hill, supra; Stout* v. *Bottorff,* 246 F. Supp. 825 (S.D. Ind. 1965) (three-judge court).

The District Court erred in relying upon *Gaffney* v. *Cummings,* 412 U.S. 735 (1973), to sustain H.B. 1290 and S.B. 2976. In *Gaffney* the Court held only that relatively minor deviations from the goal of population equality (in that case, 7.83%) did not require justification. The teachings of both *Gaffney* and *White* v. *Regester, supra,* indicate that legislative reapportionment plans with total deviations over 10%, which these are, do shift the burden of proof

and require a rational justification from the State. In this case, the State presented no proof beyond the acts themselves and accompanying committee reports (Tr. 304). No rational justification has been presented to sustain the excessive population deviations in these plans. The variances cannot be justified on any theory of preserving county lines, maintaining compactness and contiguity, or recognition of natural or historical boundary lines, since the Legislature rejected and could have passed numerous alternatives, all of which satisfied these criteria, which would have provided greater equality of population among the districts.

Nor does *Mahan* v. *Howell, supra,* also relied upon by the District Court, sustain these plans. The evidence before the Court there showed that with a total deviation of 16.4% "the legislature's plan, subject to minor qualifications, 'produces the minimum deviation above and below the norm, keeping intact political boundaries . . .'" 412 U.S. at 326. That is not the case here. Further, the Court clearly held that the 16.4% deviation approved there "may well approach tolerable limits" and "result in a maximum percentage deviation that we hold to be within tolerable constitutional limits." *Id.* at 329. The deviations of the plan here exceed those "tolerable constitutional limits" and are greater than any deviations from population equality ever approved by this Court.

CONCLUSION

Because the questions presented by this appeal are substantial and are of great public importance, this Court should note probable jurisdiction, advance this case on the docket, and set it down for expedited briefing, argument, and if possible for an expedited

decision prior to the 1975 state legislative elections. This Court should reverse the judgment of the District Court, and remand this case with instructions to order the implementation of single-member legislative districts, statewide, for both houses of the Mississippi Legislature which do not operate to minimize and cancel out Black voting strength.

Respectfully submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION NO. 3830(A)

PEGGY J. CONNOR, ET AL., *Plaintiffs,*

v.

WILLIAM L. WALLER, ET AL., *Defendants.*

Opinion

(Filed May 20, 1975)

Before COLEMAN, *Circuit Judge,* RUSSELL, *Chief District Judge,* and COX, *District Judge.*

COLEMAN, *Circuit Judge.*

The sole issue in this case is whether House Bill 1290 and Senate Bill 2976 [1] of the Acts of the Mississippi Legislature, Regular Session of 1975, approved by the Governor on April 7 and April 8, have reapportioned the State Legislature in conformity with the Constitution of the United States.

The attack on the validity of these Acts is divided into two parts:

(1) The apportionment does not comply with the one person-one vote rule;

(2) The apportionment resulted in an unconstitutional dilution of the black vote for selection of the Legislature.

Since the qualifying deadline for candidates for the Legislature is June 5, 1975, the Court has proceeded to

[1] Copies of the Acts are annexed to this opinion.

hear and determine the matter as expeditiously as possible, considering the intervention of the Judicial Conference of the Fifth Circuit, April 28-May 1, 1975, which the members of this Court were required by law to attend.

A hearing was held in Jackson on May 7. Briefs have been received and considered. We now decide the case.

Except for the election of Representatives from Harrison County, to be hereinafter discussed, we find no constitutional infirmity. Other than as to Harrison County, the complaint will be dismissed.

The History of this Litigation

This three-judge District Court, composed of the same Judges, has been occupied with the reapportionment of the Mississippi Legislature since October 19, 1965, Connor v. Johnson, 256 F. Supp. 962 (S.D. Miss., 1966). On July 22, 1966, we invalidated the apportionment of the Mississippi Legislature as it then existed, Connor v. Johnson, *supra*.

The regular quadrennial primary elections were scheduled for August, 1967. We delayed court ordered redistricting so as to give the Mississippi Legislature until December 1, 1966 in which to enact a reapportionment plan of its own. The Legislature was unable to agree on reapportionment in any form.

On March 3, 1967, we found it necessary to enter a decree reapportioning the Senate and the House of Representatives of the State of Mississippi in accordance with the one person-one vote rule, 265 F. Supp. 492 (S.D. Miss., 1967). There was no appeal. These proceedings were grounded on the United States Census of 1960.

There was no further action until the 1971 Legislature (elected in 1967) set about the enactment of a reapportionment based on the 1970 Census. On May 18, 1971, we held that the 1971 legislative reapportionment did not comply

with the one person-one vote rule. The 1971 quadrennial elections being imminent, we formulated a court ordered plan of reapportionment, Connor v. Johnson, 330 F. Supp. 506. The population figures, norms and variances, are there set forth in detail.

On June 3, 1971 (Mr. Chief Justice Burger, Mr. Justice Black, and Mr. Justice Harlan dissenting), the Supreme Court stayed our decree until June 14. We were instructed, absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County and to extend the filing date for legislative candidates from that county to an appropriate date. In addition to the stay, the Supreme Court held that a decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act. The decision on this point was unanimous, Connor v. Johnson, 402 U.S. 690, 91 S.Ct. 1760, 29 L.Ed.2d 268.

On June 16, 330 F. Supp. 521, we found that there were insurmountable difficulties to the division of Hinds County into single-member districts. The Supreme Court declined to interfere with this finding.

The 1971 legislative elections were held on schedule in accordance with the decree of May 14, 1971. On January 24, 1972, the Supreme Court declined to invalidate that election, Connor v. Williams, 404 U.S. 549, 92 S.Ct. 656, 30 L.Ed.2d 704. However, the Court vacated our prior decree in order that a special master could be appointed to devise single-member districts for Hinds, Harrison, and Jackson Counties, saying "If we are to consider the applicability of *Preisler* and *Wells* to state legislative districts, it would be preferable to have before us a final judgment with respect to the entire state. To accomplish this result and to preserve the right to appeal from such a judgment, the judgment of the District Court is vacated . . . and the case is remanded to the District Court for further proceedings consistent with this opinion".

Significantly, however, the Supreme Court noted, 92 S.Ct. 658, fn. 4, the possibility "That the state legislature will adopt a plan of its own". It further said, "This Court has frequently emphasized that 'legislative reapportionment is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when the Legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so' ".

The outcome of all this was that the 1973 session of the Legislature enacted Chapters 456 and 457 of the Laws of 1973, approved April 6, 1973 [House Bill 1389; Senate Bill 2452], reapportioning the Legislature in anticipation of the 1975 elections.

On April 19, 1973, plaintiffs, being dissatisfied with the 1973 Acts, filed their objections in this Court.

In the midst of the well known burdens imposed upon and shouldered by three-judge Courts in numerous such cases filed in Mississippi, having waited also for the completion of a judicial reapportionment of Hinds County then in progress, we reconvened on February 7, 1975, to consider the constitutionality of the 1973 legislation.

The Mississippi Legislature was then in session and several of its members attended the hearing. They heard the various objections raised. Some of them testified. They heard the discussion of what the Supreme Court, two weeks previously, had decided in Chapman v. Meier, — U.S. —, 95 S.Ct. 751, — L.Ed.2d — (1975).

Among other things, some of which will be mentioned later in this opinion, the Supreme Court said:

> "We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State through its Legislature or other body, rather than of a federal court (citations omitted). Hopefully, the 1975 North Dakota Legisla-

tive Assembly will perform that duty and enact a constitutionally acceptable plan. If it fails in that task, the responsibility falls on the District Court and it should proceed with dispatch to resolve this seemingly interminable problem."

Immediately after the hearing of February 7, it became public knowledge that the Legislature had initiated another effort to reapportion its membership. Heeding the teachings of *Meier*, we delayed a decision on the 1973 Acts to see if they were to be replaced by a 1975 enactment.

The Legislature did enact Senate Bill 2976 of the Acts of the Regular Session of 1975, reapportioning the State Senate, and House Bill 1290 of the same Session, reapportioning the House of Representative. These bills were approved by the Governor on April 7 and 8.

As we saw it, this mooted prior proceedings before this Court. On April 10, 1975, we dismissed finally all prior proceedings with prejudice. We directed the plaintiffs to file, within five days, an amended complaint, directed to the 1975 Reapportionment Acts. The defendants were required to answer within five days thereafter.

We thus began with a fresh record, shorn of the papers accumulated during the previous ten years,[2] facilitating a resolution of the issues pertinent to the 1975 enactments, and likewise facilitating Supreme Court review, which was sure to follow.

The Law

(1)

One Person-One Vote

The appropriate standards of the one person-one vote rule applicable to state legislative reapportionment are no

[2] The office file of the author of this opinion dealing with this litigation, 1965-1975, contained papers approaching two feet in depth.

longer open to speculation or substantial doubt. In this connection, the 1973 Spring Term of the Supreme Court began a new era for the courts and for state legislators. See, Albany Law Review, Volume 38, Page 798 (1974).

On February 21, 1973 ,the Court handed down Mahan v. Howell, 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320. It held that a reapportionment statute maintaining the integrity of traditional county and city boundaries in Virginia while reapportioning legislative districts in a manner resulting in a percentage variation of 16.4 percent from the ideal district, with an average percentage variation of ±3.89 percent, and providing for a combination of 52 single-member, multimember and floater delegate districts from which 100 delegates would be elected did not violate the Equal Protection Clause of the Fourteenth Amendment. It let stand multimember districts in Fairfax County, each for the election of five legislators.

In *Mahan*, the Supreme Court taught us that the constitutional validity of the reapportionment and redistricting of state legislative bodies (when done by the Legislature) is to be determined by the application of an "as nearly as practicable" equal protection test, not by a stringent population test. It was further held that the policy of preserving political boundaries is rational, that a rational state policy may justify deviations from the population requirements otherwise required by the Equal Protection Clause, and that a 16.4 percent maximum deviation from population equality may have approached but did not exceed tolerable limits.

The Court warned, of course, that the goal of substantial population equality may not be emasculated.

Then, on June 18, 1973, the Supreme Court decided Gaffney v. Cummings, 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298.

The Connecticut Legislature could not agree on a plan of reapportionment; neither could an eight member bipartisan commission. No plan emerged until after the matter was submitted to another commission composed of state court judges, which approved a plan only by a majority vote. The results were challenged, one of the complaints being that the plan amounted to a political gerrymander. A three-judge district court invalidated the plan. The Supreme Court reversed.

The *Gaffney* Court told us that only those limited population variances may be permitted for which justification is shown or which are unavoidable despite a good faith effort to achieve absolute equality. We were further told that an acceptable plan may not be invalidated simply because another plan could be conceived with lower deviations among the state's legislative districts, 412 U.S. at 741. The test for districts in state reapportionment is that they must be "as nearly equal as *practicable*". (Emphasis added) Divergencies from a strict population standard may be based on legitimate considerations incident to the effectuation of a rational state policy. Population deviations large enough to *require* justification may nevertheless be justifiable and legally sustainable.

It was said:

> "Nor is the goal of fair and effective representation furthered by making the standards of reapportionment so difficult to satisfy that the reapportionment task is recurringly removed from legislative hands and performed by federal courts which themselves must make the political decisions necessary to formulate a plan or accept those made by reapportionment plaintiffs who may have wholly different goals from those embodied in the official plan. . . . We doubt that the Fourteenth Amendment requires repeated displacement of otherwise appropriate state decisionmaking in the name of essentially minor deviations from perfect census-population equality that no one, with confidence, can say

will deprive any person of fair and effective representation in his state legislature.

"That the Court was not deterred by the hazards of the political thicket when it undertook to adjudicate the reapportionment cases does not mean that it should become bogged down in a vast, intractable apportionment slough, particularly when there is little, if anything, to be accomplished by doing so.

". . . . Was the Master compelled, as a federal constitutional matter, to come up with a plan with smaller variations than were contained in appellees' plans? And what is to happen to the Master's plan if a resourceful mind hits upon a plan better than the Master's by a fraction of a percentage point? Involvements like this must end at some point, but that point constantly recedes if those who litigate need only produce a plan that is marginally 'better' when measured against a rigid and unyielding population-equality standard.

"The point is, that such involvements should never begin. We have repeatedly recognized that state reapportionment is the task of local legislatures or of those organs of state government selected to perform it. Their work should not be invalidated under the Equal Protection Clause when only minor population variations among districts are proved. . . . ."

In cases raising the issue of impermissible population deviations in state legislative reapportionment, "each case must be evaluated on its own facts, and a particular population deviation from the ideal may be permissible in some cases but not in others", Chapman v. Meier, 95 S.Ct. at 763 (1975).

(2)

DILUTION OF THE BLACK VOTE

On this subject we discuss first White v. Regester, 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973).

In that case, multimember districts in Bexar and Dallas Counties were invalidated because the three-judge district court had *found* enhanced opportunities for racial discrimination.

The ruling clique in Dallas County did not need the support of the black community to win elections, had not exhibited good faith concern for the political and other needs and aspirations of the black community, racial campaign tactics had been used in white precincts to defeat candidates who had the overwhelming support of the black community, the black community had been effectively excluded from participation in the Democratic primary selection process, and was generally not permitted to enter the political process in a reliable and meaningful manner.

As to Bexar County, 'the three-judge district court *found* that the Mexican-American populace of Bexar "had long suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others". Seventy eight percent of the Mexican-American community, amounting to 29 percent of the population of the County, resided in the Barrio, suffered from cultural and language barriers that made their participation in community processes extremely difficult. Mexican-American registration was "very poor". The Bexar County legislative delegation in the House was insufficiently responsive to Mexican American interests. The District Court found that the Bexar County Mexican-Americans "are effectively removed from the political processes of Bexar County".

The Supreme Court was not inclined to overturn this "intensely local appraisal".

It did say, however, that the fact that a racial group has not had legislative representation is not enough to establish invidious discrimination.

In Gaffney v. Cummings, *supra*, it was pointed out that "multimember districts may be vulnerable, if racial or political groups have been fenced out of the political process and their voting strength invidiously minimized".

On the other hand, there is no duty to deliberately draw lines so as to insure the election of members of sizable racial, ethnic, economic or religious groups, Whitcomb v. Chavis, 403 U.S. 124, 91 S.Ct. 1858, 1875-1878, 29 L.Ed.2d 363 (1971). A minority group is not constitutionally entitled to an apportionment structure designed to maximize its political advantage, Turner v. McKeithen, 5 Cir., 1973, 490 F.2d 191, 197. Under that rule, a minority group is not entitled to another redistricting so that a majority of the voters in at least one district of a county would be black, Gilbert v. Sterrett, 5 Cir., 1975, 509 F.2d 1389.

When is a group fenced out?

What constitutes a fence?

What is dilution made of?

The Fifth Circuit answered these questions in Bradas v. Rapides Parish Police Jury, 5 Cir., 1975, 508 F.2d 1109, rehearing *en banc* denied, 510 F.2d 1407 (1975).

In Louisiana the police jury is essentially a parish legislature, 508 F.2d at 1110, fn. 4. A ward is the basic territorial subdivision of the parish. Rapides had eleven wards. No black had ever been elected to serve on either the police jury or the school board.

We quote from the opinion, 508 F.2d at 1112:

> Consideration of the evidence below in the light of these factors emphasizes the dearth of appellees' proof. Neither the record nor the district court's findings indicates difficulty on behalf of blacks in registering to vote, in choosing the political party they desire to support, in meaningfully participating in party activities, in qualifying as candidates for a desired office,

in participating in the candidate selection process, or in participating meaningfully in any other portion of the political process. The record does not evidence a state policy favoring multi-member districts that is rooted in racial discrimination, nor does it indicate a lack of responsiveness on behalf of elected officials to the particular concerns of the black community.

The single glaring fact that no black has ever been elected to a parish office does not by itself support judicial nullification of a reapportionment plan. It evidences no more at the most than a policy of past discrimination. But the issue here of course is not whether Rapides Parish discriminated against blacks in the past, but rather whether any debilitating effects of that discrimination still persist. See *Zimmer*, supra, 485 F.2d at 1306. In previous cases such debilitating effects have usually been shown by a relatively large discrepancy between the size of the black population and the number of registered black voters, *Zimmer*, supra, 485 F.2d at 1306, or between the number of blacks registered to vote in federal elections and the number of blacks registered to vote in state elections, *Turner*, supra, 490 F.2d at 195. A finding of continuing effects of past discrimination is not supported by any evidence in this record.

Likewise it does not suffice to show that the use of multi-member districts has diminished to some extent the proportion of blacks in the voting unit unless some evidence also demonstrates that such multi-member districts were "conceived or operated as purposeful devices to further racial or economic discrimination." Whitcomb v. Chavis, 1971, 403 U.S. 124, 149, 91 S.Ct. 1858, 1872, 29 L.Ed.2d 363. To the same extent that the black proportional strength in Ward 1 is decreased by "tacking on" the substantially white Ward 8, the proportional strength of the blacks in Ward 8 has increased. While we have previously recognized that "such increases or decreases in proportional strength resulting from the change from one apportionment system to another may in some cases provide significant evidence of (discriminatory) motive or effect," *Turner*, supra, 490 F.2d at 196, the 5% decrease in-

volved before us does not assume compelling significance.

"In Howard v. Adams County Board of Supervisors (5 Cir. 1972, 453 F.2d 455, 457) this court stated that to establish the existence of a constitutionally impermissible redistricting plan, plaintiffs must maintain the burden of showing either first, a racially motivated gerrymander, or a plan drawn along racial lines, or second, that '. . . designedly or otherwise, a(n) . . . apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' " *Zimmer,* supra, 485 F.2d at 1304.

Legislative History of the Acts and Findings Thereasto

SENATE

Floor debates in the Mississippi Legislature are not stenographically reported or mechanically recorded.

As to the legislation now under consideration, however, we do have the committee reports and the recitations of the bills.

Senate Bill No. 2976 recites that the Legislature recognizes its primary responsibility "as recently emphasized by the Supreme Court in *Chapman* v. *Meier*" and that it is aware of the guidelines prescribed in *Mahan* v. *Howell.* The Bill further recites that "from the attainment of statehood in 1817, Mississippi has structured the apportionment of its Legislature on county lines, there being no instances of the election of Senators from a district smaller than a county. No district has ever been established by combining parts of one (1) county with portions of others because the county is the basic, traditional governmental unit upon which the state is organized and through which such primary functions as courts, elections and taxation have been conducted". From the Mississippi Constitutions

of 1817, 1832, 1869 and 1890, this Court takes judicial notice that this legislative statement is literally true.

Prior to the enactment of the Bill a Report of the Senate Committee on Elections, entitled "Legislative History and Statement of Intent" was adopted by the Senate by a vote of 51 to 1. This report listed the decisions of the United States Supreme Court and of this three-judge court dealing with legislative reapportionment. The Committee had also studied reapportionment proposals submitted by Mayor Charles Evers, well known black leader and candidate for governor in 1971. Additionally, it had studied the plan submitted by the plaintiffs to this Court.

The following excerpt from the Committee Report is of significance:

> "The committee, in its earliest deliberations, considering the manner in which counties are structured and governed in Mississippi and the need to quite frequently pass legislation dealing only with particular counties, determined that the policy of maintaining the integrity of county lines in establishing legislative districts should be continued.
>
> "It might be pointed out that county lines have remained unchanged with only a few exceptions since 1890, and that the Legislature and courts, since the Constitution of 1890, have recognized the integrity of county lines in establishing legislative districts."

Mayor Evers appeared before the Committee and concurred that the integrity of county lines should be maintained.

The Committee then proceeded to say:

> "The committee, desiring to respect county lines, nevertheless is aware and recognizes that it is under a constitutional duty to 'make an honest and good faith effort to construct legislative districts in both Houses of its Legislature as nearly equal in population as is practicable', *Mahan* v. *Howell, supra.* This

we have done our very best to do. We have also sought to reduce multi-member districts as much as possible, still giving effect to the one-person, one-vote requirement of the United States Constitution, and attempted to continue the policy of this state to maintain the integrity of political subdivision lines in the reapportionment of legislative seats. We have sought to produce a minimum deviation above and below the norm, keeping political boundaries intact.

"Since the county is such a basic unit of government in Mississippi, and since so much legislation is passed by the Legislature which directly affects the individual county as a whole and so much legislation is passed which directly affects each and every county in the state as a whole, and since very seldom is legislation passed affecting only parts of a county, and since 10 of the 12 Representatives from Hinds County are to be elected by beats and only 2 Representatives from Hinds County are to be elected at large, the committee has determined that the 5 Senators from Hinds County should be elected at large. To require that the Senators from Hinds County be elected by and from beats of the county would mean that not a single Senator from Hinds County would be elected to represent Hinds County as a whole. The United States Supreme Court in *Mahan* v. *Howell, supra,* approved two five-member senatorial districts established by the Legislature in Virginia. It is the sense of this committee that, in the event Hinds County should ever elect more than 5 Senators, a different policy should prevail."

The Committee Report then discusses, at length, proposals advanced by Mayor Charles Evers for the enhancement of black voting strength. It was found that the maximum population deviation in the Evers plan was 47.2 percent and the Committee felt that the Courts would disapprove such a plan.

The Committee then further reported, as follows:

"The committee also considered a proposal for reapportionment which was presented to the United States

District Court by the plaintiffs in the action currently pending before that court styled *Connor* v. *Waller*.

"This proposal admitedly achieves a greater mathematical exactness than does the proposal reported by the committee in Senate Bill 2976, but the committee feels that the final product of the plaintiff's proposal is impracticable and unworkable. In the plaintiffs proposal, the maximum deviation above the norm is 1.68% found in District 18 composed of Clay County and part of Oktibbeha County. The maximum deviation below the norm is 1.73% found in District 52 composed of a part of Jackson County. The total variance therefore is only 3.39% from the maximum negative deviation of 1.73% to the maximum positive deviation of 1.66% a figure which the committee would be pleased to approve if the apportionment structure which yields that low variance were otherwise practicable.

"The plaintiffs proposal initiates a new reapportionment procedure for Mississippi—the division of counties and even of beats within counties for the purpose of establishing legislative districts. A review of the plaintiff's proposal indicates that 40 of the 52 districts or 77% of the districts created by the plaintiffs cross county lines and that 46, or 89%, of the new districts cross supervisor's beat lines within the county in creating the districts. Only 4 proposed districts, Districts 1, 12, 21 and 22 are composed of counties which are not divided or are composed of a subdivision of a county.

"The plaintiff's proposal was not approved by the committee because the committee did not want to abrogate the historical state policy of creating Senate districts coinciding with county lines, because the committee did not want to abridge the traditional power of local government to establish voting precincts and because the committee did not want to create unnecessary confusion and impose an unwarranted hardship upon voters and election officials by structuring voting precincts on enumeration districts which are subject to frequent change."

The Committee then described its reapportionment plan, concluding that it had an average percentage variance of 6.12 percent, the average deviation above the norm being 6.45 percent and the average deviation below the norm being 5.63 percent. No district varies from the norm by as much as 10 percent, and sixteen of the thirty three districts vary by less than 5 percent.

Findings on the Senate Plan

The plaintiffs having offered no credible evidence to the contrary, we find as a fact that the Senate, as advised by its Committee, was aware of the one person-one vote reapportionment standards mandated by the Constitution of the United States, that it made an honest effort in good faith to comply with those standards and that, in fact, it complied with those standards.

The matter of racial dilution is reserved for discussion in a later portion of this opinion.

House of Representatives

The report of the House Committee on apportionment and elections on House Bill No. 1290 is ten typewritten pages in length, legal size. It is too lengthy for inclusion in this opinion *in toto*. This Court has closely studied the Committee Report. As to all pertinent factors, there is no substantial distinction between it and the Senate Committee Report, except that Mayor Evers is not reported to have appeared before the House Committee, although he may have done so.

Interestingly enough, after its study, the House Committee recommended, *with three exceptions,* exactly the same alignment of districts, numbered the same, composed of the same counties, as directed by this Court in its decrees of May 18 and May 21, 1971, 330 F. Supp. beginning at Page 509. Recognizing the particular circumstances in

Hinds, Harrison, and Jackson Counties, the Legislature made different provisions for the election of Representatives from those Counties.

HINDS COUNTY

As to Hinds County (District 31, composed of 12 Representatives), it is directed that 2 Representatives shall be elected from the County-at-Large and 2 Representatives shall be residents of and be elected from each of the five Supervisors Districts of that County. It was further directed that the election by beat should be from the beats as established by the judgment of the United States District Court for the Southern District of Mississippi reapportioning the Supervisors Districts of said County in the case of Kirksey v. The Board of Supervisors of Hinds County, Civil Action No. 4939.

We take judicial notice that on April 24, 1975, the said United States District Court did reapportion the Supervisors Districts in said County so that the population of the five beats will be, respectively, as follows:

District 1, 42,948

District 2, 43,061

District 3, 43,199

District 4, 43,010

District 5, 42,755

The maximum population deviation in this plan is 1.04 percent. Two of the Districts, electing four Representatives, are black majority Districts.

We entertain not the slightest doubt that the procedure devised for Hinds County substantially complies with one person-one vote standards.

HARRISON COUNTY

Prior to 1962, under the outmoded legislative reapportionment formula cemented into the Constitution of 1890, Harrison County had only one Representative and participated in the election of a Floater Representative. Subsequent to *Baker* v. *Carr,* the County has been entitled to seven Representatives. Under the reapportionment plan ordered by the Court in 1971, the seven Representatives from Harrison County were elected by county wide vote. House Bill No. 1290 of the Acts of 1975 recognizes that the United States District Court has acquired jurisdiction over the reapportionment of Harrison County for the election of Supervisors, that is, for the division of the County into five districts of substantially equal population. The Legislature directed that should said districts be determined by decision of the United States District Court prior to June 6, 1975, then one Representative should be elected from each of the five districts and two Representatives should be elected by the county at large.

This Court takes judicial notice of the fact that on May 16, 1975, in the case, Civil No. 3146, Southern Division of the United States District Court for the Southern District of Mississippi, styled William D. G. Skellie and Eugene J. Niolet v. Ernest C. Melvin, the defendant Board of Supervisors of Harrison County was given until May 21, 1975 ,in which to file with said Court a plan dividing Harrison County into five districts in compliance with the one person-one vote rule.

According to the 1970 Census, the population of the five supervisors districts of Harrison County was as follows:

District 1, 23,151

District 2, 31,480

District 3, 17,276

District 4, 21,082

District 5, 41,593

This Census, however, was taken at the height of the population displacement caused by Hurricane Camille in August, 1969.

If the population today were distributed as reflected by the Census of 1970, said districts would be seriously malapportioned.

Presumably, the redistricting plan which must be filed on or before May 21, will reflect population distribution as it now exists.

No doubt the Legislature was impressed by the fact that in 1971 the Supreme Court had looked with a skeptical eye upon electing seven Representatives from Harrison County at large. The Legislature certainly knew that prior to the enactment of the 1973 Act, now repealed, this Court had expected to appoint a special master to divide the County into seven single member districts.

By a prior order in the Harrison County redistricting case, the District Court had deferred action because of the disruption caused by Hurricane Camille. There is no reason, as of the present, to assume or presume that the District Court will falter in its intention to speedily redistrict the County as indicated by its order of May 16.

If there should be a failure, we direct the Attorney General of Mississippi, who is a party defendant, to move forthwith to intervene in the Harrison County reapportionment case on behalf of the people of Mississippi, who are entitled to a fairly apportioned Legislature, and to pursue with diligence the efforts to have the County properly reapportioned. We further direct that when such reapportionment shall have been accomplished, as a finality, the Attorney General shall forthwith apply to this Court for its judgment as to whether or not a special election shall then be called to elect Representatives from the properly apportioned Supervisors Districts. If the reapportionment is

completed by the filing deadline of June 5, 1975, then the necessity for special elections will have been mooted.

The District Judge to whom the Harrison County case is assigned will, we believe, move with celerity, for he has only recently completed the most difficult task of reapportioning Hinds County, the most populous and one of the largest in land area in the State.

Jackson County

Jackson County, population 87,975, is, of necessity, combined in District 46 with George County, population 12,459. Jackson is bounded on the South by Mississippi Sound and on the East by Alabama. George County is bounded on the East by Alabama. It has only one third of the people required for the election of a Representative. The Legislature sought to avoid having George totally disenfranchised by requiring that one of the Representatives elected from the District should be a resident of that County.

The Act further provided that the remaining five Representatives from District 46 should reside, respectively, in one of each of the five Supervisors Districts of Jackson County but should be elected by the district at large, that is by both George and Jackson Counties.

This plan is, we think, subject to criticism. It provides for at large elections of six Representatives, which is one more than the number approved by the Supreme Court in Fairfax County, Virginia. If, however, the five Representatives residing in Jackson County are elected one from each Supervisors District, then Jackson County would be denied all county wide representation in the Mississippi Legislature, a result hardly to be desired since the County is the most heavily industrialized of any in the State, has a highly mobile population, and conflicting interests represented, for example, by industry on one hand and fishing and recreational interests on the other. The arrangement here may be a Solomonic one, but it appears to be the best that can

be done under the circumstances. We know of no better remedy. It must be noted that on February 18, 1970, in the case of E. B. Sigalas v. Lum R. Cumbest, Et Al., C.A. 3239, not appealed, the United States District Court for the Southern Division of the Southern District of Mississippi reapportioned Jackson County into five districts of substantially equal voting population, as follows:

District 1, 5890

District 2, 5625

District 3, 5906

District 4, 5925

District 5, 5683

With one Representative residing in each of these districts it hardly appears that the interests of the people in any beat would be ignored and county wide participation in their election will eliminate prejudice to any part of the County.

Since the reapportionment process for the State as a whole ran out of cloth at this point, we decline to hold that this arrangement violates the one person-one vote rule. Each case must be decided on its own facts, Chapman v. Meier, *supra.*

Population Ratios for the House of Representatives from the State as a Whole

The apportionment plan for the House of Representatives has an average percentage variance of 9.99 percent, with the average deviation above the norm being 4.45 percent, the average below the norm 5.54 percent, and no district varies above or below by as much as 10 percent. Twenty one of the districts vary by less than 5 percent.

We have taken a look at the maximum variations which are in excess of the deviation approved in *Mahan* v. *Howell.*

District 3, DeSoto and Marshall Counties, is 9.9 percent above the norm and District 18, Grenada and Montgomery, near the center of the State, is below the norm by 9.8 percent, for a maximum deviation of 19.7 percent. We take note of the fact that Marshall County, bordering Tennessee, is 30 percent above the population norm for one Representative and must be combined somewhere if 5856 of its citizens are not to be left out of the equation. On the other hand, DeSoto County, the northern border of which is twelve miles from downtown Memphis, is the fastest growing County in the State. The 1970 figures are already much out of date, the exact extent of which we know not, but the situation here will present a massive change when the 1980 Census figures are known.

This Court takes judicial notice of its independent efforts, by computer and otherwise, to create the 1971 plan, 330 F. Supp. 506. Looking at the picture statewide, the Court is aware of no better solution for the situation prevailing in Marshall and DeSoto. The Legislature has done what this Court did. After 1980 this area will most likely be entitled to four Representatives.

District 36, Simpson County is 9.7 percent above the norm, while District 34, Amite, Franklin, and Wilkinson, a thinly populated area, squeezed in between the Mississippi River and the Louisiana boundary, is 9.5 percent below the norm, for a maximum deviation of 19.2 per cent. The Legislature placed these Counties exactly as this Court, for lack of a better alternative, placed them in 1971.

District 19, Attala County, in the geographical center of the State, is 7.7 percent above the norm, while District 14, Bolivar County, on the Mississippi River bordering Arkansas, is 9.3 percent below the norm, for a maximum of 17 percent.

All other Districts are within the Virginia ceiling which approached, but did not reach, impermissibility.

It is fortunate, we think, that out of forty six House Districts only six are above the maximum deviation permitted in *Mahan* v. *Howell*, one pair of Districts by 3.3 percent, another by 2.8 percent, and the last by .6 of one percent.

Mississippi has a total population of 2,216,912 people, residing in eighty-two counties. On a computerized basis, the norm for each county would be 27,035. Twenty two counties have less than half of that population. Issaquena, on the River, has 2,737. Ten counties have less than 10,000 people. Thirty counties have an area of less than 500 square miles.

The State has three highly diverse geographical regions, the Yazoo-Mississippi Delta, the Northeast hills, and the Piney Woods, which merge with the Gulf Coast. The disparities in these regions account in a large measure for abrupt deviations in population, even in adjoining counties. Senator J. Z. George and his associates in the Constitutional Convention of 1890 tried to compensate for these divergencies by erecting three "grand divisions", the counties designated for each, for the purpose of legislative reapportionment. No division could have less than one third of the total representation in the House. Section 254 of the Constitution of 1890.

Under the impact of one person-one vote, the "grand divisions" are long gone. They had to go because, in the present day, many of the counties had three times more, or three times less, representation than their population entitled them to have.

In accomplishing a valid reapportionment of the Mississippi Legislature, the mind boggling problem is to begin at the Tennessee border and move southward between Alabama and the Father of Waters to the Gulf of Mexico, winding up with legislative districts as close to the population norm as "may be practicable". From our own experience in formulating the 1971 plan, we know that the difficulties would be hard to exaggerate.

We conclude this discussion of the one person-one vote reapportionment of the Mississippi Legislature by quoting from our 1971 opinion in this case, 330 F. Supp. at 518:

> In Mississippi each County is divided into five beats, which are the units of county government. Supervisors, school board members, local election commissioners, justices of the peace, and constables, (local county officials) are elected from the beats. The plaintiffs have suggested that a more nearly equal apportionment might be attained in some instances by separating a beat from the county to which it belongs and adding it to another county in order to attain a population figure more closely approaching the norm and in order to create districts for the election of a single legislator. It is the opinion of the Court, however, that such action is not necessary in order to attain satisfactory reapportionment, as the hereinabove tables of population clearly demonstrate.
>
> There are two added objections. First, the County has always been the only unit of state government. The boundaries have been fixed by statute for generations. Every citizen, regardless of his lack of education or other opportunities, knows the county of his residence and where he is expected to vote. There are 410 beats in Mississippi, the boundaries of which may be, and often are, changed by order of the Board of Supervisors. Beat lines generally follow governmental land lines as laid down by section, township, and range—in other words invisible to all, and unknown to most. It is a rare individual who knows where a beat line is at any given point, although most are able to keep up with the general location of the beat for the purpose of electing local officials with whom the voter is personally acquainted. Even worse, in our opinion, is the thought that a beat taken from one county and arbitrarily annexed to another for the sole purpose of attaining a desired, arbitrary population ratio, would, in practical effect, destroy the weight of the vote of the annexed (minority) beat. The voter would *appear* to be voting on an equality, and mathematically this would be so, but his chance of influencing the outcome desired by the great majority living in the adjoining county would be ephemeral.

> We, therefore, adhere to county lines as the best, fairest and most effective method of delineating districts for the election of state legislators in Mississippi.

We must not overlook the fact that as in Virginia, Section 89 of the Mississippi Constitution of 1890 provides for local and private legislation.[3] The litigants in this case have not provided the Court with any statistics on the volume of local and private legislation annually enacted by the Mississippi Legislature but we take judicial notice of the fact that it is considerable. As to any particular county, it is often of crucial importance.

From the foregoing, adopting all statements of fact made on the responsibility of the Court as findings of fact, we summarize, as findings of fact.

1. The preservation of the integrity of county lines from the very beginning has been, and is, uniform state governmental policy and tradition in Mississippi. At the May 7 hearing counsel for plaintiffs conceded [Transcript, Page 8] that no instance could be found from 1817 to date in which county lines had been breached in setting up legislative districts. As the Supreme Court recogized in *Mahan, supra,* it is a rational policy.

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[3] There shall be appointed in each house of the legislature a standing committee on local and private legislation; the house committee to consist of seven representatives, and the senate committee of five senators. No local or private bill shall be passed by either house until it shall have been referred to said committee thereof, and shall have been reported back with a recommendation in writing that it do pass, stating affirmatively the reasons therefor, and why the end to be accomplished should not be reached by a general law, or by a proceeding in court; or if the recommendation of the committee be that the bill do not pass, then it shall not pass the house to which it is so reported unless it be voted for by a majority of all members elected thereto. If a bill is passed in conformity to the requirements hereof, other than such as are prohibited in the next section, the courts shall not, because of its local, special, or private nature, refuse to enforce it.

2. In the 1975 legislative reapportionment now under consideration, the Legislature acted awarely of its constitutional responsibilities. It made an honest effort in good faith to comply with those responsibilities.

3. It did comply with those responsibilities.

4. The Acts reapportioning the House and the Senate, with the exception of Harrison County, represent as nearly as practicable, a compliance with the standards of the one person-one vote rule as enunciated by the Supreme Court of the United States. Any deviations from the population norm, with the noted exception, were reasonably unavoidable and, as hereinabove set forth, were constitutionally justified.

5. The reapportionment plan adopted by the Legislature, except as to Harrison County, grants substantially equal weight to every vote of every citizen in the selection of the Mississippi Legislature. We have no doubt that the 1975 reapportionment of the Mississippi Legislature will not deprive any person of fair and effectual representation in that lawmaking body, Gaffney v. Cummings, *supra*. This intensely local appraisal is born of ten years' experience with this case, White v. Regester, *supra*.

We turn now to the issue concerning the alleged dilution of black voting strength, the applicable law having already been stated.

Facts Concerning Dilution of the Black Vote

The irony of the one person-one vote rule is that it caused a drastic dilution of black legislative voting strength. Many of the majority black voting counties fell far short of having the population required to retain the seats theretofore assigned to them.

The evidence of this is found in the following table which reflects the population in the black majority counties in

1960, their representation in the House in 1960, and the applicable norm today.

COUNTY	BLACK Pop. 1960	WHITE 1960	HOUSE MEMBERS 1960	HOUSE MEMBERS (By Norm) 1970 Census
Amite	8,440	7,130	2	0.75
Bolivar	36,663	17,521	3	3.00
Carroll	6,492	4,677	2	0.57
Claiborne	8,239	2,600	1½	0.55
Clay	9,717	9,214	2	1.00
Coahoma	31,440	14,630	2	2.23
Copiah	14,058	12,992	3	1.35
DeSoto	14,625	9,248	2	1.90
Holmes	19,488	7,595	3	1.27
Humphreys	13,300	5,758	1	0.79
Issaquena	2,399	1,176	1	0.25
Jasper	8,437	8,402	1½	0.82
Jefferson	7,652	2,489	1½	0.52
Jeff Davis	7,408	6,126	1	0.71
Kemper	7,212	4,828	3	0.43
Leflore	30,307	16,699	1	2.30
Madison	23,630	9,267	2	1.60
Marshall	17,239	7,264	3	1.30
Noxubee	12,064	4,724	3	0.78
Panola	16,216	12,565	3	1.48
Quitman	13,254	7,715	1	0.87
Sharkey	7,469	3,247	1	0.49
Sunflower	30,855	14,370	1	2.00
Tallahatchie	15,400	8,580	1	1.00
Tate	10,439	7,696	2	1.00
Tunica	13,315	3,505	1	0.65
Washington	43,097	35,239	3	3.50
Wilkinson	9,428	3,807	2	0.62
Yazoo	18,759	12,862	3½	1.50
TOTAL	——	——	58	35(.23)

* Floater with another County.

It will be seen from the foregoing that pursuant to the 1970 Census the 29 black majority counties of 1960 lost 23 seats in the House of Representatives.[4]

If one took a look at the statistics in isolation (as appears often to be done) he would say that the application of the one person-one vote rule caused the dilution of the black voting strength of these Counties by 40 percent. The facts are that under the apportionment built into the Constitution of 1890 these Counties had been over represented by 23 seats in the Mississippi House of Representatives. Such glaring inequalities made the one person-one vote rule mandatory.

While we do not prolong this opinion to demonstrate it in detail, there were dramatic shakeups in the white majority Counties as well. One example: Prior to one person-one vote, Choctaw County, the home of the author of this opinion, had elected from one to three Representatives and shared a Senator with another county. Now Choctaw has no Representative alloted to it; it shares a Representative with another county. It shares a Senator with three other counties, not just one. Indeed, there are only eleven of the fifty three white counties which are entitled to elect at least one Representative in their own right from single county districts. From 1817 to 1962 each county was guaranteed at least one Representative, elected without the intervention of any other county.

The plaintiffs desire to compound this situation by adding numerous appendices across county lines [beats and

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[4] Under the impact of Baker v. Carr (1962), the first Mississippi legislative reapportionment since 1890 was undertaken in 1962. In this process, the Mississippi Constitution was amended to reduce the number of Representatives from 140 to 122 because ⅔ of each House and the people at the polls thought that the membership was too large for a State with the size and population of Mississippi. The reduction in members correspondingly increased the population norm required for the election of a Representative. The size of the Senate, however, was increased from 49 to 52.

census enumeration districts] in which the appendix would be allowed to go to the polls but whose vote would have no meaningful impact on true equality of representation in a practical sense. As we understand *Mahan* v. *Howell*, a state is not required to do this if it has a well defined policy of not fracturing its county lines and wishes to maintain that policy.

ORIGIN OF MULTIMEMBER AND MULTICOUNTY DISTRICTS

The use of multiple member and multiple county legislative districts in Mississippi does not have its origin in a desire to cancel out or minimize black voting strength. Before the Civil War, the State had twenty two multiple member House Districts, electing from two to four members each. It also had eighteen Senatorial Districts, composed of from two to four counties each. Hutchinson's Mississippi Code of 1848, Pages 377, 378.

It is a historical fact that under the impact of the Civil War and Reconstruction the Mississippi Constitutional Convention of 1868 was under the joint control of those who, regrettably, had formerly been slaves and of recent arrivals, sometimes uncharitably referred to as Carpetbaggers.

This 1869 Constitution, which provided for universal manhood suffrage, also provided that twenty nine counties should each elect anywhere from two to five Representatives at large. Twenty three of the twenty nine Senatorial districts contained anywhere from two to six counties. Article XI, Mississippi Constitution of 1869, Page 665, Revised Code of 1871.

The policy of more than one legislator from a district and multiple county senatorial districts was in vogue before the Civil War, was reaffirmed by the Reconstruction Constitution, and continued by the Constitution of 1890. It is not only a state policy of ancient origin but it definitely

did not arise from racially discriminatory motives. We find this to be an indisputable fact.

MULTIMEMBER SENATORIAL AND HOUSE DISTRICTS

Of the thirty three Senatorial Districts, nineteen districts elect one Senator, eleven districts elect two Senators, two districts elect three Senators, and one district, Hinds County, elects five Senators.

In the House of Representatives, there are forty six districts for the election of 122 Representatives. With the exception of Jackson and George Counties, the circumstances of which have been hereinabove discussed, no electoral entity will choose more than four Representatives and there are very few which fall into the three or four Representative category.

Where more than one Senator or Representative is to be elected from the same electoral jurisdiction, the candidates are required to run by numbered posts, that is, post one, post two, post three, etc.

To avoid the confusion involved in casting multiple votes for multiple candidates, Mississippi began adopting the practice in 1954 (Chapter 317, Laws of 1954) of requiring that there be as many posts as there are places to be filled. The candidate qualifies for whatever post he chooses, and by this method the voter is required to vote for only one place for any office at a time. This greatly simplifies the electoral process. It prevents one or two candidates in a group from sweeping the field, particularly candidates who otherwise would have been unopposed. It tends to keep the voter from voting for more candidates than there are offices to be filled, as well as voting for less than the number of places to be filled. Ballots of the former type are thrown out because the will of the voter cannot be ascertained. Those of the latter type would allow the voter to add undue weight to his vote. For example, if three candidates are to

be elected and a voter casts his ballot for only one he has, in effect, voted three times for one candidate. For this reason this practice was long ago prohibited in this State.

It is the view of this Court that the post system gives every candidate a better chance at the office he seeks. Instead of running against a host of candidates for a number of places, he runs only against those seeking the particular place to which he aspires. The post system largely, if not altogether, dispels the weaknesses in electing a number of members from multimember districts, as discussed by the Supreme Court in Chapman v. Meier, 95 S.Ct. at 760. To be specific, the voter expresses his or her choice for only one office at a time, as if he were voting in a single member district. There can be no confusion, because each post for each office is so identified on the ballot. Since 1903 Mississippi has required that candidates receive a majority of the votes cast in order to win a party primary. If no candidate gets a majority in the first primary, then a run off is required three weeks later between the two high candidates in the first primary.

As a general rule there are three or more candidates for the same office in the November general elections—Republican, Democrat, and sometimes several Independents.

We, therefore, find that the post system allows the voter a clear cut choice for each place to be filled.

Since there are, generally, no more than three legislative places to be filled at a time, we see nothing constitutionally impermissible about the post system, especially when it is recalled that two districts in Fairfax County, Virginia, were allowed to elect five members of the Virginia House of Delegates.[5]

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[5] We are not informed as to whether mulitmember candidates in Virginia are required to run by posts or whether there is a general "melee", from which five candidates attain the top.

Effects of Past Discrimination

For ten years the elective franchise in the State of Mississippi, as in Virginia and other states, has been under the strict scrutiny authorized by the Voting Rights Act of 1965.

Reverend Rims Barber, Associate Director of the Delta Ministry, assisting "persons and groups of people who are oppressed by poverty or by discrimination in the State of Mississippi", a witness for the plaintiffs, estimated that from 65 to 70 percent of the voting age eligible blacks are registered to vote in Mississippi [Transcript, 225], while from 77 to 83 percent of the eligible white citizens are registered. He testified that 80 or 90 of the 410 supervisors districts in Mississippi had black population majorities. In these, ten black supervisors have been elected. He knew of only two instances in recent years when there had been what he considered to be interference with the right to actually cast a ballot in Mississippi. Certain black voters were challenged in a municipal election in the Town of Hollandale in 1973, and in a precinct in Madison County. They, however, were allowed to cast challenged ballots. He thought that the technical bars to political participation in Mississippi are "99 percent down" [Transcript, 253]. There are approximately 1700 voting precincts in Mississippi.

Mr. Henry J. Kirksey, one of the plaintiffs, a black citizen, also testified. He was a candidate for the State Senate in 1971, did not actively campaign, and spent no more than $85.00 campaign expenses. He was running as an Independent, opposing Republican and Democratic nominees. He received about 10,000 votes. Seventeen thousand black citizens were registered to vote in the City of Jackson, the predominant portion of Hinds County. He carried all of the black majority precincts, but apparently failed by several thousands of votes to receive the support of all the black voters. He has voted in nearly all elections in Hinds

County since 1961. He has not had any problem since 1961 in participating in the political processes of Hinds County.

This sums up the testimony offered to show that past discrimination remains a viable force in Mississippi electoral processes, that blacks have any difficulty in registering to vote, that they have any difficulty in meaningfully participating in candidate selection, [Mississippi nominates in primary elections; there is no party registration and the voter participates in the primary of his choice] or in participating meaningfully in any other portion of the political processes.

The testimony did show that Representative Clark, presently the only black member of the Legislature, had only one bill enacted into law, but it concerned sickle cell anemia, a dread scourge of the black race, and thus a matter of prime importance to it. The list of bills admitted in evidence dealt mostly with such questions as making it a criminal offense not to vote, posting certain signs on the highway, and declaring state holidays in honor of the late Reverend Martin Luther King, who was not a resident of Mississippi, and of the late Medgar Evers, who was. This was the sole evidence directed toward showing that the Mississippi Legislature is not appropriately responsive to the needs of our black citizens in such important matters as free public education, health services, welfare benefits, or any other matter of importance to all citizens on a nondiscriminatory basis.

Under the controlling precedents discussed earlier in this opinion, we find as a fact that plaintiffs have failed to carry the burden of proof that in the electoral processes of Mississippi black citizens are now suffering from the impact of past discrimination, that they are hindered, hampered, or in any way impeded in registering to vote or in voting for candidates of their individual choice. As a matter of fact, it is obvious that the Voting Rights Act of 1965 has effectually reduced all such racially discriminatory factors to

what honestly may be termed an irreducible min
tainly this is true as to official state policy.

WITH FURTHER REFERENCE TO CANCELLATI
MINIMIZATION OF BLACK VOTING STRENG

Racial Population Distribution in Missis

According to the United States Census of 19
sippi had a white population of 1,394,781 and
inhabitants numbered 815,770—63.4 percent whi
percent black, if broken strictly along black-w
lines. There were also 4,037 Indians and a minir
of other non-white ethnic groups, such as Ja
Chinese.

The black population is not uniformly
throughout the State.

Of the eighty two Counties, twenty six ha
population majority and fifty six are white maj
black majority counties are in the First Congre
trict, four are in the Second District, nine are i
five in the Fourth, and none in the Fifth. The
trict is located in the Piney-Woods-Gulf Coast
comparably, has never had a significant black

In the eight Counties in the Northeastern qu
virtually non-slave area which opposed Secessi
by Tennessee and Alabama, there were 152,107
25,333 blacks.[6]

In the nineteen Counties situated wholly or
the Yazoo-Mississippi Delta Region, the black
is 286,313, compared to 231,121 whites.

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[6] Alcorn, Itawamba, Lee, Pontotoc, Prentiss, Ti
mingo, and Union. By the norm this area is enti
Senators and nine Representatives. By the same mea
aggregate black population of these Counties do not m
for one Senator nor for as many as two Representative

Despite such disparities in black-white population concentration the Legislative reapportionment of 1975 provides for the following:

SENATORS

	Districts	Senators
Districts over 50% black	8	12
Districts 36-50% black	6	13
	14	25
Statewide Average Black Population	36.9%	
Senators to be elected fr om Districts having 36% black population or more	48.7%	

REPRESENTATIVES

	Districts	Representatives
Districts over 50% black	10	26
Districts 36-50% black	16	46
	26	72
Representatives to be elected from Districts having 36% black population or more	55%	

The breakdown for the various House and Senatorial Districts is as follows:

Districts for House of Representatives

District	Seats	White	Black	Percentage White	Percentage Black
1	3	41,561	8,926	82%	18%
2	2	32,044	3,016	91%	9%
3	3	32,336	27,502	54%	46%
4	5	76,103	20,881	78%	22%
5	1	10,819	5,976	64%	36%
6	1	14,254	3,097	82%	18%
7	1	16,145	2,944	85%	15%
8	2	28,120	10,518	73%	27%
9	2	20,132	18,567	52%	48%
10	1	9,777	8,760	53%	47%
11	4	24,144	43,747	36%	64%
12	1	7,657	11,632	40%	60%
13	2	13,619	23,261	37%	63%
14	3	18,750	30,338	38%	62%
15	4	32,836	40,149	45%	55%
16	2	12,434	25,203	33%	67%
17	3	22,165	29,145	43%	57%
18	2	18,275	14,477	56%	44%
19	1	11,632	7,903	60%	40%
20	1	11,065	7,198	61%	39%
21	1	13,858	4,619	75%	25%
22	1	9,517	9,306	51%	49%
23	5	56,749	35,637	61%	39%
24	4	52,074	26,242	66%	34%
25	3	31,347	17,999	64%	36%
26	2	25,543	10,189	71%	29%
27	2	24,863	9,941	71%	29%
28	4	42,677	30,902	58%	42%
29	2	15,815	20,363	44%	56%
30	3	29,010	25,877	53%	47%
31*	12	130,592	84,064	61%	39%
32	2	14,594	19,433	43%	57%
33	2	19,366	17,865	52%	48%

* Four members for Hinds County are from black majority Supervisors Districts.

District	Seats	White	Black	Percentage White	Percentage Black
34	2	15,199	17,550	46%	54%
35	3	36,041	21,862	62%	38%
36	1	13,678	6,258	69%	31%
37	2	23,414	14,642	62%	38%
38	2	23,142	12,190	65%	35%
39	4	56,711	16,164	78%	22%
40	3	42,403	13,810	75%	25%
41	1	11,169	5,470	67%	33%
42	1	13,426	4,264	76%	24%
43	2	28,908	6,958	81%	19%
44	2	14,894	2,467	86%	14%
45*	7	111,061	22,743	83%	17%
46	6	84,554	15,706	84%	16%
		SENATORIAL DISTRICTS			
1	2	49,649	34,207	59%	41%
2	1	34,749	9,190	79%	21%
3	1	37,211	5,777	87%	13%
4	2	71,576	14,349	83%	17%
5	1	36,571	9,548	79%	21%
6	2	53,672	31,518	63%	37%
7	1	31,786	16,382	66%	34%
8	1	20,132	18,567	52%	48%
9	1	19,689	26,494	43%	57%
10	1	14,232	26,013	35%	65%
11	2	32,369	53,599	38%	62%
12	2	36,892	47,920	43%	57%
13	1	17,550	24,374	42%	58%
14	1	18,811	20,322	48%	52%
15	2	35,341	56,352	39%	61%
16	1	26,699	18,765	59%	41%
17	1	26,156	11,296	70%	30%
18	1	23,413	19,401	55%	45%
19	2	52,074	26,242	66%	34%

* This is Harrison County. Population: 111,067 white, 22,743 Black.

District	Seats	White	Black	Percentage White	Percentage Black
20	1	27,606	12,240	69%	31%
21	1	31,529	12,354	72%	28%
22	5	130,592	84,064	61%	39%
23	1	26,474	18,355	59%	41%
24	2	46,650	34,252	58%	42%
25	2	36,961	42,411	47%	53%
26	1	25,306	18,915	57%	43%
27	3	81,556	35,554	70%	30%
28	1	28,804	15,700	65%	35%
29	1	35,602	11,812	76%	24%
30	2	62,931	18,028	78%	22%
31	1	37,582	7,561	83%	17%
32	3	111,061	22,743	83%	17%
33	2	73,547	14,258	84%	16%

From these statistical considerations we conclude, and find as a fact, that black voting strength for the selection of Senators and Representatives is neither minimized nor cancelled out by the Reapportionment Act of 1975.

We shall discuss, however, plaintiffs' objections to certain House and Senate Districts which they contend cancel out or minimize black voting strength.

An Analysis of Plaintiffs' Racial Dilution Objections to the Legislative Plan of Reapportionment

Plaintiffs' expert witness, Dr. Gordon Henderson, who testified more extensively than any other witness who appeared before the Court, raised racial dilution objections to only six of the thirty three Senatorial Districts as prescribed by the Legislature: Districts numbered 1, 8, 16, 18, 19, and 24 [Transcript, 100].

According to the testimony of Dr. Henderson, *District 1*, DeSoto, Lafayete, and Marshall Counties, two seats, had a population variance of 1.37 percent. He pointed out that

Marshall County is a black majority county. He conceded that with a population of 24,017 Marshall lacked 16,000 people having enough for a Senatorial District of its own, therefore combination with some other county is unavoidable. He suggested, however, that Marshall should have been combined with Tate, which would have given a 55.55 percent black population, with one seat, and would have had a population variance of .14 percent.

We note, however, that as constituted by the Legislature, the First District has a 41 percent black population.

Obviously, if Marshall were moved out of the First District and if Tate should be moved from District 9, both Districts would correspondingly be upset. The problem would then be what to do with DeSoto, since it joins only Marshall, Tate, and Tunica. It cannot be moved into Tennessee and it cannot be sent across the river into Arkansas. Under these circumstances, the suggestion that joining Marshall with Tate is constitutionally mandated is rejected as impracticable.

Dr. Henderson next objected to the Eighth District, Panola and Yalobusha, with one Senator. As constituted by the Legislature the District has a 48 percent black population. His alternative was that Panola be combined with Quitman, resulting in a District 53.54 percent black. Quitman, however, is already in a black majority District (No. 9), where the blacks outnumber the whites 26,494 to 19,689. As to racial dilution in Panola, however, that County has a black population majority of only 692 out of a total population of 26,814. Moreover, Dr. Henderson declined to predict that the 2 percent disparity between the black and white population in District 8 would have any predictable impact on the outcome of an election, even if blacks followed the practice of voting only for black candidates and whites did the same as to white candidates. We find that there is not enough disparity in this district to warrant federal court interference with legislative discretion.

He next objected to District 16, Attala, Carroll and Leake. As consituted by the Legislature this District has a black population of 41 percent. The only black majority county in the district is Carroll, and that County has only 145 more black than white.

We are of the opinion that a majority of only 145, out of a total population of 9,397, a majority which may have been lost since 1970 would not justify rejecting the Legislative plan, necessitating, of course, the reshuffling of every checker on the Reapportionment board. According to Census returns, between 1960 and 1970 the black population of Carroll County declined by 1,721 (26%), from 6,492 to 4,771.

The next District which Dr. Henderson questioned is District 18, Noxubee and Oktibbeha. Under the Legislative plan this District has a black population of 45 percent. Although Noxubee County adjoins the Alabama state line and thus hard to move about on the redistricting checkerboard (while at the same time maintaining, within adequate tolerance, the required district population norm elsewhere), Dr. Henderson thought that Noxubee should be combined with Kemper and Winston, which would give a black population advantage of only 1.73 percent, a net black gain of only 6.73 percent. Again, it would seem to us that a 6.73 percent improvement in the black ratio is hardly enough to brand this District as unconstitutional, necessitating a statewide reshuffling of Districts. Between 1960 and 1970, the black population of Noxubee County declined by 3,620 (30%), from 12,064 to 9,444. Indeed, as pointed out by the Supreme Court in *Gaffney* v. *Cummings*, the 1970 Census, now five years old, is subject to some discount as to racial numbers in any particular locality. Between 1960 and 1970 the black population of Mississippi declined by 99,973 (10%), from 915,743 to 815,770. If this trend has continued, and we have no evidence on the subject, many of the percentages based on the 1970 Census are infected with considerable inaccuracy.

The next District objected to was District 19, Kemper and Lauderdale, which, under the Legislative plan, has a black population of 34 percent. Kemper County has only about one-fourth enough people to qualify for a Senator. It adjoins the Alabama line. Commercially, economically, and socially it is a satellite of the adjoining county of Lauderdale, so the Legislature combined it with Lauderdale. The witness for the plaintiffs said that one possibility would have been to combine Noxubee, Kemper, and Winston. This is the same proposal he made for District 18, and it could hardly have been used for both. Between 1960 and 1970 the black population of Kemper County declined by 2,000 (27%), from 7,212 to 5,612.

The last District was District 24, Claiborne, Copiah, Lincoln, and Simpson. As constituted by the Legislature this District has a black population of 42 percent. Claiborne County has a population of only 10,086. Dr. Henderson suggested that a District should have been composed of Claiborne, Copiah, and Jefferson to form a District which would have had a black majority population of 61.08%. This would have necessitated taking Jefferson out of the southwest corner District (District 25), leaving that District, which has a black majority population of 53 percent, 9,295 people short of the required norm. Claiborne County lost 717 in black population between 1960 and 1970.

The Plan for the House of Representatives

Dr. Henderson found fault with only seven of the forty six House Districts [Transcript 137].

The Court carefully went over these objections with him, while he was on the witness stand. We see no necessity for prolonging this already too lengthy opinion by setting forth a detailed District by District analysis. His testimony is of record and we are confident that it presented no facts which would necessitate a reshuffling of the Legislative plan in order to preserve federal constitutional guarantees.

Plaintiffs vigorously complain that except for Hinds, Harrison, and Jackson Counties the Legislature has adopted the same plan of reapportionment promulgated by this Court in 1971. Our 1971 plan, as already stated, was based on the premise of maintaining the integrity of county boundaries. We know of no federal constitutional principle which prohibits a state legislature, in its discretion, from adopting as its own a plan, or parts of a plan, which has already passed federal court scrutiny. In 1971, we stated that "we have cast to one side any purpose of discrimination or favoritism of any kind", 330 Fed. Supp. at 508.

On May 13, plaintiffs filed a post hearing motion to supplement the record with a statement made by the Governor of Mississippi at a press conference on May 7. To avoid confusion, the motion is granted. We attribute no evidentiary value to the statement, however, because it was cast in the form of a general discussion of the issues, was not made in Court and not subject to cross examination. Moreover, the Governor is sworn to uphold the Constitution of the Unted States and he signed into law the Bills now under review.

Conclusion

For all of the reasons hereinabove set forth, we hold as a matter of law and we find as facts that, with the exception of the election of Representatives from Harrison County (which may be cured), the reapportionment of the Legislature of the State of Mississippi provided in Senate Bill 2976 and House Bill 1290 is not violative of the one person-one vote rule and does not unconstitutionallly minimize or cancel out black voting strength for the election of the Mississippi Legislature.

Except as to Harrison County, the complaint will be dismissed with prejudice. As to that County, jurisdiction will be retained to effectuate the purposes with reference thereunto stated.

Counsel for the parties are directed to forthwith prepare and submit a decree accordingly, which any Judge of this Court is hereby authorized to enter for the Court.

The respective parties will bear their own costs.

This May 19, 1975.

/s/ JAS. P. COLEMAN
United States Circuit Judge

/s/ DAN M. RUSSELL, JR.
Chief Judge
United States District Court

/s/ HAROLD COX
United States District Judge

APPENDIX B

(Caption Omitted in Printing)

Judgment

(Filed May 22, 1975)

This cause having come on for hearing on the merits of this action challenging the constitutionality of House Bill No. 1290 and Senate Bill No. 2976, Mississippi Laws, 1975 Regular Session, which enactments constitute a reapportionment plan for the Legislature of the State of Mississippi, and the Court having received oral and documentary evidence, having received the briefs of the parties, and being fully advised in the premises, for the reasons set forth in the Court's opinion of May 19, 1975, the Court is of the opinion that except for the election of Representatives from Harrison County (which may be cured), the reapportionment of the Legislature of the State of Mississippi provided in House Bill No. 1290 and Senate Bill No. 2976 is not violative of the one person-one vote rule and does not unconstitutionally minimize or cancel out black voting strength for the election of the Legislature of the State of Mississippi; and therefore the Amended Complaint should be dismissed with prejudice except as to Harrison County, as to which the Court retains jurisdiction for the limited purposed set forth in said opinion of May 19, 1975. The Court is further of the opinion that House Bill No. 1290 and Senate Bill No. 2976, Mississippi Laws, 1975 Regular Session, are not required to be submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c.

It Is Therefore Ordered, Adjudged and Decreed that the Amended Complaint be dismissed with prejudice except as to Harrison County, as to which the Court retains

jurisdiction for the limited purposes set out in the Court's opinion of May 19, 1975.

IT IS FURTHERED ORDERED, ADJUDGED AND DECREED that the parties bear their respective costs.

ORDERED, ADJUDGED AND DECREED by the Court over the signature of this member of the Three-Judge Court by express provision of this Court's opinion of May 19, 1975, on this the 22d day of May, 1975.

s/ HAROLD COX
United States District Judge

APPROVED AS TO FORM:

s/ FRANK R. PARKER
Counsel for Plaintiffs

s/ A. F. SUMMER
Counsel for Defendants

APPENDIX C

(Caption Omitted in Printing)

Notice of Appeal to the Supreme Court of the United States

(Filed May 22, 1975)

Notice is hereby given that Peggy J. Connor, et al., the plaintiffs herein, hereby appeal to the Supreme Court of the United States from the final order rendering judgment for the defendants and denying injunctive relief entered in this action on May 22, 1975.

This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ Frank R. Parker
Frank R. Parker

Herman Wilson
Lawyers' Committee for
Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

John L. Maxey, II
Pyles, Cupit & Maxey
507 East Pearl Street
Jackson, Mississippi 39201

Attorneys for Plaintiffs

(Certificate of Service Omitted in Printing)

APPENDIX D

Black Majority Counties Arbitrarily Combined with White Majority Counties Creating White Majority Districts. House Bill 1290 (House Plan)

District	Counties Combined by Race		District Total Population by Race		No. of Seats
3	Desoto	W-23,235 (64.7%) N-12,611 (35.1%) O- 39	W-32,336 (54.0%) N-27,502 (45.9%) O- 74		3
	MARSHALL	W- 9,101 (37.9%) N-14,891 (62.0%) O- 35			
9	PANOLA	W-13,061 (48.7%) N-13,753 (51.3%) O- 15	W-20,132 (52.0%) N-18,567 (47.9%) O- 45		1
	Yalobusha	W- 7,071 (59.3%) N- 4,814 (40.4%) O- 30			
23	Lowndes	W-33,336 (67.1%) N-16,236 (32.7%) O- 128	W-56,749 (61.2%) N-35,637 (38.4%) O- 354		5
	NOXUBEE	W- 4,844 (33.9%) N- 9,397 (65.8%) O- 47			
	Oktibbeha	W-18,569 (64.6%) N-10,004 (34.8%) O- 179			
24	KEMPER	W- 4,488 (43.9%) N- 5,612 (54.8%) O- 133	W-50,674 (65.5%) N-26,242 (33.9%) O- 404		4
	Lauderdale	W-46,186 (68.8%) N-20,630 (30.8%) O- 271			

District	Counties Combined by Race		District Total Population by Race		No. of Seats
28	MADISON	W-11,148 (37.5%) N-18,548 (62.4%) O- 41	W-42,677 (57.9%) N-30,902 (41.9%) O- 91		4
	Rankin	W-31,529 (71.8%) N-12,354 (28.1%) O- 50			
30	CLAIBORNE	W- 2,536 (25.1%) N- 7,522 (74.6%) O- 28	W-29,010 (52.7%) N-25,877 (47.0%) O- 180		3
	Warren	W-26,474 (58.9%) N-18,355 (40.8%) O- 152			
37	Covington	W- 9,426 (67.3%) N- 4,565 (32.6%) O- 11	W-23,414 (61.5%) N-14,642 (38.5%) O- 19		2
	JEFFERSON DAVIS	W- 6,435 (49.7%) N- 6,497 (50.2%) O- 4			
	Lawrence	W- 7,553 (67.8%) N- 3,580 (32.1%) O- 4			

Senate Bill 2976 (Senate Plan)

District	Counties Combined by Race	District Total Population by Race	No. of Seats
1 Desoto	W-23,235 (64.7%) N-12,611 (35.1%) O- 39	W-49,649 (59.0%) N-34,207 (40.7%) O- 237	2
Lafayette	W-17,313 (71.6%) N- 6,705 (27.7%) O- 163		
MARSHALL	W- 9,101 (37.9%) N-14,891 (62.0%) O- 35		
8 PANOLA	W-13,061 (48.7%) N-13,753 (51.3%) O- 15	W-20,132 (52.0%) N-18,567 (47.9%) O- 45	1
Yalobusha	W- 7,071 (59.3%) N- 4,814 (40.4%) O- 30		
16 Attala	W-11,632 (59.4%) N- 7,903 (40.4%) O- 35	W-26,699 (58.0%) N-18,765 (40.7%) O- 588	1
CARROLL	W- 4,615 (49.1%) N- 4,771 (50.8%) O- 11		
Leake	W-10,452 (61.2%) N- 6,091 (35.7%) O- 542		
18 NOXUBEE	W- 4,844 (33.9%) N- 9,397 (65.8%) O- 47	W-23,413 (54.4%) N-19,401 (45.1%) O- 226	1
Oktibbeha	W-18,569 (64.6%) N-10,004 (34.8%) O- 179		
19 KEMPER	W- 4,488 (43.9%) N- 5,612 (54.8%) O- 133	W-50,674 (65.5%) N-26,242 (33.9%) O- 404	2

District	Counties Combined by Race		District Total Population by Race		No. of Seats
	Lauderdale	W-46,186 (68.8%) N-20,630 (30.8%) O- 271			
24	CLAIBORNE	W- 2,536 (25.1%) N- 7,522 (74.6%) O- 28	W-46,650 (57.6%) N-34,252 (42.3%) O- 78		2
	COPIAH	W-12,298 (49.7%) N-12,437 (50.3%) O- 14			
	Lincoln	W-18,138 (69.2%) N- 8,035 (30.7%) O- 25			
	Simpson	W-13,678 (68.6%) N- 6,258 (31.4%) O- 11			
27	Covington	W- 9,426 (67.3%) N- 4,565 (32.6%) O- 11	W-81,556 (69.5%) N-35,554 (30.3%) O- 193		3
	JEFFERSON DAVIS	W- 6,435 (49.7%) N- 6,497 (50.2%) O- 4			
	Jones	W-42,403 (75.2%) N-13,810 (24.5%) O- 144			
	Lawrence	W- 7,553 (67.8%) N- 3,580 (32.1%) O- 4			
	Marion	W-15,739 (68.8%) N- 7,102 (31.1%) O- 30			

APPENDIX E

Discriminatory State Legislation Enacted Since 1965 Showing the Unresponsiveness of the Mississippi Legislature to the Needs and Interests of the Black Community and Denials of Equal Access to the Political Process.

Miss. Laws, 1965 Extra. Sess., ch. 11, requiring literacy as a condition to voter registration.	Enjoined as violative of the Voting Rights Act of 1965, *United States* v. *Mississippi*, 256 F. Supp. 344 (S.D. Miss. 1966) (three-judge court).
Miss. Laws, 1965 Extra. Sess., ch. 19, repealing Miss. Code Ann. § 3273 (1956 Recomp.), providing assistance at the polls to illiterate voters.	Held violative of the Voting Rights Act of 1965, assistance to illiterate voters ordered, *United States* v. *Mississippi*, 256 F. Supp. 344 (S.D. Miss. 1966) (three-judge court).
Miss. Laws, 1965 Extra. Sess., ch. 38 (S.C.R. 102), petitioning Congress for constitutional convention to overrule *Reynolds* v. *Sims*.	
Miss. Laws, 1965 Extra. Sess., ch. 39 (S.C.R. 102), petitioning Congress for constitutional convention to eliminate public school desegregation.	
Miss. Laws, 1966, ch. 290, p. 374, amending Miss. Code Ann. § 2870 (1956 Recomp.) to authorize switch to at-large election of county supervisors.	Held to be a change in election laws which must be submitted under Section 5, *Allen* v. *St. Bd. of Elections*, 393 U.S. 544 (1969), after submitted USDJ objected under Section 5, 5/21/69.

Miss. Laws, 1966, ch. 406, authorizing switch from election to appointment of county superintendent of education, and requiring appointment in 11 specified counties.	Same.
Miss. Laws, 1966, ch. 613, increasing the qualifying requirements for independent candidates for office.	Same.
Miss. Laws, 1966 Extra. Sess., ch. 41, (S.B. 1504), reapportioning House and Senate including multi-member districts.	Held unconstitutional for malapportionment, *Connor* v. *Johnson*, 265 F. Supp. 492 (S.D. Miss. 1967).
Miss. Laws, 1967 Extra. Sess., S.R. 101, petitioning governor to include in call of session HEW school desegregation guidelines and to declare them null and void in Mississippi.	
Miss. Laws, 1968, ch. 564, p. 946, amending Miss. Code Ann. § 2870 (1956 Recomp.) to authorize at-large election of county supervisors.	Never submitted under Sec. 5 and therefore unenforceable.
Miss. Laws, 1968, ch. 393, authorizing payment of tuition grants to students attending racially segregated private schools formed as an alternative to public school desegregation.	Enjoined as unconstitutional, *Coffey* v. *State Educ. Finance Comm'n*, 296 F. Supp. 1389 (S.D. Miss. 1969) (three-judge court).

Miss. Laws, 1969 Extra. Sess., ch. 27 (H.B. 67), providing loans for educational expenses of students attending racially segregated private schools formed as an alternative to public school desegregation.	Enjoined as unconstitutional, *Coffey v. State Educ. Finance Comm'n*, Civil No. 3906 (S.D. Miss. Sept. 2, 1970) (three-judge court).
Miss. Laws, 1970, ch. 374, making freedom of choice school attendance law and policy of state.	
Miss. Laws, 1970, ch. 390 (H.B. 839), establishing discriminatory education requirements for early childhood education and Head-start teachers.	Voided by Federal regulation, amendment to Head Start Policy Manual, Part B, §3, subparagraph a(1), June 8, 1970.
Miss. Laws, 1970, chs. 506, 508, the "open primary" laws, abolishing party primaries, requiring a majority vote to win general election, etc.	Enjoined for lack of adequate Section 5 clearance, *Evers* v. *State Bd. of Election Comm'rs*, 327 F. Supp. 640 (S.D. Miss. 1971) (three-judge court), appeal dism'd, 405 U.S. 1001 (1972); Section 5 objection by USDJ, 4/28/74.
Miss. Laws, 1970, ch. 543, exempts private schools from corporate franchise tax.	
Miss. Laws, 1971, ch. 394, reapportioning House and Senate including multi-member districts.	Held unconstitutional for malapportionment, *Connor* v. *Johnson*, 330 F. Supp. 506 (S.D. Miss. 1971) (three-judge court), vacated and remanded on other grounds, 404 U.S. 549 (1972).

Miss. Laws, 1971, ch. 493, amending Miss. Code Ann. § 2870 (1956 Recomp.) to authorize switch to at-large election of county supervisors.	Section 5 objection by USDJ, 9/10/71.
Miss. Laws, 1972, ch. 490, § 502, amending voter registration form to ask additional burdensome and harassing questions (¶ 7), amended in 1975 under Congressional pressure reviewing extension of Voting Rights Act of 1965.	
Miss. Laws, 1973, H.C.R. 55, petitioning Congress to call constitutional convention to prohibit pupil assignment in public schools on account of race.	
Miss. Laws, 1974, H.C.R. 42, petitioning Congress to repeal the Voting Rights Act of 1965.	
Miss. Laws, 1975, H.B. 907, §§ 2-39, reenactment of the "open primary" law (1966 Laws, chs. 506, 508) rendered unenforceable by Section 5 objection, 4/28/74.	
Miss. Laws, 1975, S.B. 2218, the "James Meredith" law, requiring independents to qualify at the same time as party candidates, similar to provision of 1966 Laws, ch. 613, rendered unenforceable by Section 5 objection, 5/21/69.	

APPENDIX F

Deviations from Population Equality in Floterial Districts. House Bill 1290 and Senate Bill 2976

(Figure in parenthesis is single-member equivalent district)

Senate District 27 (Court's deviation: —8.285%)			
Covington	14,002)		
Jefferson Davis	12,936)		
Lawrence	11,137)	—5.923%	(40,108)
Marion	22,871)		
Jones	56,357	—10.708%	(38,068)
House District 1 (Court's deviation: —7.297%)			
Alcorn	27,179	—2.735%	(17,674)
Benton	7,505)		
Tippah	15,852)	—12.091%	(15,974)
House District 4 (Court's deviation: +6.808%)			
Itawamba	16,847	—21.000%	(14,355)
Lee	46,148	+ 2.587%	(18,641)
Monroe	34,043	+38.694%	(25,202)
House District 11 (Court's deviation: —6.186%)			
Coahoma	40,447	—14.160%	(15,598)
Quitman	15,888)		
Tunica	11,854)	+ 8.519%	(19,719)
House District 23 (Court's deviation: +2.075%)			
Lowndes	49,700	+ 7.859%	(19,599)
Noxubee	14,288)		
Oktibbeha	28,752)	— 3.874%	(17,467)

House District 25 (Court's deviation: —8.233%)

Newton	18,983	—24.269%	(13,761)
Jasper	15,994)		
Clarke	15,049)	+ 5.421%	(19,156)

House District 28 (Court's deviation: +1.359%)

Madison	29,737	+16.587%	(21,185)
Rankin	43,933	— 6.879%	(16,921)

House District 35 (Court's deviation: +6.312%)

Lincoln	26,198	— 0.710%	(18,042)
Pike	31,756	+12.900%	(20,515)

See: Deposition of Harold E. Sweeney, Jr., Ex. P-6, and Dep. Ex. 1.

APPENDIX G

Transcript of Governor William L. Waller's Remarks on Legislative Reapportionment at Press Conference on May 7, 1975.

"Of course in any case where there's litigation proceeding, I think it would be unstatemanlike for me to try to comment on the issue or the evidence related to the issue in litigation so I'd rather not comment or answer your question except in this manner: I think when the legislature addressed this problem it had a very complex situation and the solution is probably not ideal but under the circumstances, in view of the complexities of the legislative process, I think they did as good as any legislature could have done in Mississippi or any other state under the circumstances."

(question, indistinguishable)

"I think that ultimately we'll go to a single-member district, but the membership at-large type of concept in some districts I think would be best if they could do . . . I know certain legislators that preferred the single-member districts, but it was a compromise. It may not be adequate under the law, but it was a compromise and to that end, I think we worked diligently to comply with the one-man, one-vote rule in representation in political office by every single segment of our population and I hope all people recognize this is a big year and rather than quarrel over the system, I'm more concerned about the high percentage of people not voting.

"We just carried out a Saturday election process in a couple of critical judges races in South Mississippi and that was an effort, Saturday was an innovation we employed to try to get more voter participation. So I hope while we're worried about the semantics of districting we'll also worry about whether or not we're currently registered both at the city hall and the county courthouse and that we're

vigilante of the candidates, the issues and prepared to vote and participate in campaigns and work for or against candidates of our choice."

—question whether he expects state to go to single-member districts statewide—

"Yea, I think that's the trend and I think you're going to have . . . I won't say five years, but there's going to be . . . it's an evolutionary process that I think it'll take some time to refine."

—indistinguishable question—

"I'm trying very hard not to get cited for contempt of court (laugh)."

—question, also indistinguishable, but about involvement—

"I think the legislature will go forward regardless of the Voting Rights Act and regardless of the requirements for approval. I think we've proven in this state, ladies and gentlemen, without any doubt, that we're willing to look at new horizons and make changes where changes are necessary and I think that the single-member district concept, or the right of the voter to choose from the smallest geographical area his representation for political office . . . I'm just speaking now as a legal theory that I think it's going to happen and I think, frankly, I would like to see the voter know, be able to respond to and have the elected official respond to him and if it takes a smaller geographical district that does cross county lines, then I'm personally in favor of the smaller georaphical unit. The 52 senators in 82 counties and some of these senators having to run in five or six counties and the people are not even aware of who the senators are or who the members of the House are, I think it's time for us to try to respond to the voter and if that's the best interest of the voter then I'm for it and I believe it is and not necessarily . . . sometimes our traditions and our customs and our provincialism in politics is a hindrance rather than a help and I think the system we have now can be improved upon."

APPENDIX H

House Bill No. 1290

CHAPTER No. 510

AN ACT TO AMEND SECTION 5-1-1, MISSISSIPPI CODE OF 1972, SO AS TO APPORTION THE MEMBERSHIP OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MISSISSIPPI IN COMPLIANCE WITH THE ONE-PERSON, ONE-VOTE REQUIREMENT OF THE FEDERAL CONSTITUTION.

WHEREAS, in the case of Mahan vs. Howell, 410 U.S. 315 (1973), the Supreme Court of the United States enunciated the most recent guidelines for the reapportionment of state legislatures in compliance with the one-person, one-vote requirement of the Federal Constitution and the prior decisions of that court on the subject, in which it was held that in reapportionment a state may pursue the rational objective of preserving the integrity of its political subdivision lines; and

WHEREAS, from the attainment of statehood in 1817, Mississippi has structured the apportionment of its Legislature on county lines, there being a few instances only of the election of Representatives from a judicial district situated solely within a county. No district has ever been established by combining parts of one county with portions of others because the county is the basic, traditional governmental unit upon which the state is organized and through which such primary functions as courts, elections and taxation have been conducted; and

WHEREAS, the Legislature recognizes its primary responsibility, as recently emphasized by the Supreme Court in Chapman vs. Meier, (January 27, 1975) to effectuate legislative reapportionment in compliance with the requirements of the Federal Constitution; and

WHEREAS, the Constitution of Mississippi fixed the number of Representatives at one hundred twenty-two (122), to be chosen from a population of two million two hundred

sixteen thousand nine hundred twelve (2,216,912) (1970 census), or one (1) Representative per eighteen thousand one hundred seventy-one (18,171) persons; NOW, THEREFORE,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 5-1-1, Mississippi Code of 1972, is amended as follows:

5-1-1. The number of Representatives shall be one hundred twenty-two (122) and shall be elected from forty-six (46) districts, composed of counties with district representation as follows:

(1) District 1 shall be composed of Benton, Tippah and Alcorn Counties. One (1) Representative (designated Post No. 1) shall be a resident of and elected by Alcorn County. One (1) Representative (designated Post No. 2) shall be a resident of either Benton or Tippah Counties and elected by Benton and Tippah Counties. One (1) Representative (designated Post No. 3) shall be a resident of any county in the district and elected districtwide.

(2) District 2 shall be composed of Prentiss and Tishomingo Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(3) District 3 shall be composed of DeSoto and Marshall Counties. Three (3) Representatives (designated Post No. 1, Post No. 2 and Post No. 3) shall be elected districtwide.

(4) District 4 shall be composed of Itawamba, Lee and Monroe Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be residents of and elected by Lee County. One (1) Representative (designated Post No. 3) shall be a resident of and elected by Monroe County. One (1) Representative (designated Post No. 4) shall be a resident of and elected by Itawamba County. One (1) Representative (designated Post No. 5) shall be elected districtwide.

(5) District 5 shall be composed of Chickasaw County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(6) District 6 shall be composed of Pontotoc County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(7) District 7 shall be composed of Union County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(8) District 8 shall be composed of Calhoun and Lafayette Counties. One (1) Representative (designated Post No. 1) shall be a resident of Lafayette County and elected districtwide. One (1) Representative (designated Post No. 2) shall be a resident of either county and elected districtwide.

(9) District 9 shall be composed of Panola and Yalobusha Counties. One (1) Representative (designated Post No. 1) shall be a resident of Panola County and elected districtwide. One (1) Representative (designated Post No. 2) shall be a resident of either county and elected districtwide.

(10) District 10 shall be composed of Tate County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(11) District 11 shall be composed of Coahoma, Quitman and Tunica Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be residents of and elected by Coahoma County. One (1) Representative (designated Post No. 3) shall be a resident of either Quitman or Tunica Counties and elected by Quitman and Tunica Counties. One (1) Representative (designated Post No. 4) shall be a resident of any county in the district and elected districtwide.

(12) District 12 shall be composed of Tallahatchie County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(13) District 13 shall be composed of Sunflower County. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(14) District 14 shall be composed of Bolivar County. Three (3) Representatives (designated Post No. 1, Post No. 2 and Post No. 3) shall be elected districtwide.

(15) District 15 shall be composed of Issaquena and Washington Counties. Four (4) Representatives (designated Post No. 1, Post No. 2, Post No. 3 and Post No. 4) shall be elected districtwide.

(16) District 16 shall be composed of Holmes and Humphreys Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(17) District 17 shall be composed of Carroll and Leflore Counties. Three (3) Representatives (designated Post No. 1, Post No. 2 and Post No. 3) shall be elected districtwide.

(18) District 18 shall be composed of Grenada and Montgomery Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(19) District 19 shall be composed of Attala County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(20) District 20 shall be composed of Winston County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(21) District 21 shall be composed of Choctaw and Webster Counties. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(22) District 22 shall be composed of Clay County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(23) District 23 shall be composed of Lowndes, Noxubee and Oktibbeha Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be residents of and elected by Lowndes County. One (1) Representative (designated Post No. 3) shall be a resident of Oktibbeha County, and shall be elected by Oktibbeha and Noxubee Counties. One (1) Representative (designated Post No. 4) shall be a resident of either Oktibbeha or Noxubee Counties and shall be elected by Oktibbeha and Noxubee Counties. One (1) Representative (designated Post No. 5) shall be a resident of any county in the district and elected districtwide.

(24) District 24 shall be composed of Kemper and Lauderdale Counties. Three (3) Representatives (designated Post No. 1, Post No. 2 and Post No. 3) shall be residents of Lauderdale County and elected districtwide. One (1) Representative (designated Post No. 4) shall be a resident of Kemper County and elected districtwide.

(25) District 25 shall be composed of Clarke, Newton and Jasper Counties. One (1) Representative (designated Post No. 1) shall be a resident of and elected by Newton County. One (1) Representative (designated Post No. 2) shall be a resident of either Jasper or Clarke Counties and elected by Jasper and Clarke Counties. One (1) Representative (designated Post No. 3) shall be a resident of any of the three (3) counties and elected districtwide.

(26) District 26 shall be composed of Leake and Neshoba Counties. One (1) Representative (designated Post No. 1) shall be a resident of Neshoba County and elected districtwide. One (1) Representative (designated Post No. 2) shall be a resident of Leake County and elected districtwide.

(27) District 27 shall be composed of Scott and Smith Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(28) District 28 shall be composed of Madison and Rankin Counties. One (1) Representative (designated Post No. 1) shall be a resident of and elected by Madison County. Two (2) Representatives (designated Post No. 2 and Post No. 3) shall be residents of and elected by Rankin County. One (1) Representative (designated Post No. 4) shall be a resident of either county in the district and elected districtwide.

(29) District 29 shall be composed of Sharkey and Yazoo Counties. One (1) Representative (designated Post No. 1) shall be a resident of Yazoo County and elected districtwide. One (1) Representative (designated Post No. 2) shall be a resident of either county and elected districtwide.

(30) District 30 shall be composed of Claiborne and Warren Counties. Three (3) Representatives (designated Post No. 1, Post No. 2 and Post No. 3) shall be elected districtwide.

(31) District 31 shall be composed of Hinds County. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be residents of Supervisors District 1 and elected by Supervisors District 1. Two (2) Representatives (designated Post No. 3 and Post No. 4) shall be residents of Supervisors District 2 and elected by Supervisors District 2. Two (2) Representatives (designated Post No. 5 and Post No. 6) shall be residents of Supervisors District 3 and elected by Supervisors District 3. Two (2) Representatives (designated Post No. 7 and Post No. 8) shall be residents of Supervisors District 4 and elected by Supervisors District 4. Two (2) Representatives (designated Post No. 9 and Post No. 10) shall be residents of Supervisors District 5 and elected by Supervisors District 5.

Two (2) Representatives (designated Post No. 11 and Post No. 12) shall be residents of the county and elected by the county at large.

The United States District Court having acquired jurisdiction over the redistricting of the supervisors districts of Hinds County in Kirksey vs. Board of Supervisors of Hinds County, Civil Action No. 4939, it is further provided that for the legislative elections to be held in 1975, the Representatives to be elected from District 31 (except those elected from Post No. 11 and Post No. 12) shall be elected as provided above from said supervisors districts as said districts are determined or approved by decision of the United States District Court in said action, regardless of any modifications to said districts brought about by appellate review. In all legislative elections held subsequent to 1975, the Representatives to be elected from District 31 (except those elected from Post No. 11 and Post No. 12) shall be elected as provided above from said supervisors districts as said districts are determined or approved by the district court or as approved or modified by the appellate courts in the event of appeal.

In the event the district court shall not have entered an order determining or modifying the supervisors districts in Hinds County before June 6, 1975, the Representatives to be elected from Hinds County shall be elected from the supervisors districts as constituted on April 1, 1975, and thereafter shall be elected from the supervisors districts as determined or modified by the district court or by an appellate court.

(32) District 32 shall be composed of Copiah and Jefferson Counties. One (1) Representative (designated Post No. 1) shall be a resident of Copiah County and elected districtwide. One (1) Representative (designated Post No. 2) shall be a resident of either county and elected districtwide.

(33) District 33 shall be composed of Adams County. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(34) District 34 shall be composed of Amite, Franklin and Wilkinson Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(35) District 35 shall be composed of Lincoln and Pike Counties. One (1) Representative (designated Post No. 1) shall be a resident of and elected by Pike County. One (1) Representative (designated Post No. 2) shall be a resident of and elected by Lincoln County. One (1) Representative (designated Post No. 3) shall be a resident of either county in the district and elected districtwide.

(36) District 36 shall be composed of Simpson County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(37) District 37 shall be composed of Covington, Jefferson Davis and Lawrence Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(38) District 38 shall be composed of Marion and Walthall Counties. Two (2) Representatives (designated Post No. 1 and Post No. 2) shall be elected districtwide.

(39) District 39 shall be composed of Forrest and Lamar Counties. Four (4) Representatives (designated Post No. 1, Post No. 2, Post No. 3 and Post No. 4) shall be elected districtwide.

(40) District 40 shall be composed of Jones County. Three (3) Representatives (designated Post No. 1, Post No. 2 and Post No. 3) shall be elected districtwide.

(41) District 41 shall be composed of Wayne County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(42) District 42 shall be composed of Greene and Perry Counties. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(43) District 43 shall be composed of Pearl River and Stone Counties. One (1) Representative (designated Post No. 1) shall be a resident of Pearl River County and elected districtwide. One (1) Representative (designated Post No. 2) shall be a resident of either county and elected districtwide.

(44) District 44 shall be composed of Hancock County. One (1) Representative (designated Post No. 1) shall be elected districtwide.

(45) District 45 shall be composed of Harrison County. One (1) Representative (designated Post No. 1) shall be a resident of Supervisors District 1 and shall be elected by Supervisors District 1. One (1) Representative (designated Post No. 2) shall be a resident of Supervisors District 2 and elected by Supervisors District 2. One (1) Representative (designated Post No. 3) shall be a resident of Supervisors District 3 and elected by Supervisors District 3. One (1) Representative (designated Post No. 4) shall be a resident of Supervisors District 4 and elected by Supervisors District 4. One (1) Representative (designated Post No. 5) shall be a resident of Supervisors District 5 and elected by Supervisors District 5. Two (2) Representatives (designated Post No. 6 and Post No. 7) shall be residents of the county and elected by the county-at-large.

The United States District Court having acquired jurisdiction over the redistricting of the supervisors districts of Harrison County in Reed vs. Quave, Civil Action No. 3146, it is further provided that for the legislative elections to be held in 1975, the Representatives to be elected from District 45 (except those elected from Post No. 6 and Post No. 7) shall be elected as provided above from said supervisors districts as said districts are determined and

approved by decision of the United States District Court in said action, unless modified by said United States District Court prior to June 6, 1975. In all legislative elections held subsequent to 1975, the Representatives to be elected from District 45 (except those elected from Post No. 6 and Post No. 7) shall be elected as provided above from said supervisors districts as said districts are determined or approved by said district court or as approved or modified by the appellate courts in the event of appeal from the decision of said district court.

(46) District 46 shall be composed of Jackson and George Counties. One (1) Representative (designated Post No. 1) shall be a resident of Supervisors District 1, Jackson County, and elected by both counties. One (1) Representative (designated Post No. 2) shall be a resident of Supervisors District 2, Jackson County, and elected by both counties. One (1) Representative (designated Post No. 3) shall be a resident of Supervisors District 3, Jackson County, and elected by both counties. One (1) Representative (designated Post No. 4) shall be a resident of Supervisors District 4, Jackson County, and elected by both counties.

One (1) Representative (designated Post No. 5) shall be a resident of Supervisors District 5, Jackson County, and elected by both counties. One (1) Representative (designated Post No. 6) shall be a resident of George County and elected by both counties.

Section 2. To minimize confusion in the electoral process, in all districts for the election of more than one (1) Representative, each Representative shall be nominated and elected by posts in order that the voter may have a clear-cut choice for each seat to be chosen from a specific group of candidates (Chapman vs. Meier, Supreme Court decision).

SECTION 3. The United States District Court (three-judge) having reserved jurisdiction over the matter of legislative reapportionment in this state in litigation presently pending, and this being the year for the election of all members of the Mississippi Legislature, the Attorney General is directed to file this act with the clerk of said court, with appropriate prayers for a determination of the constitutionality of the same.

SECTION 4. If any part of this act should be held to be unconstitutional by said court or by the United States Supreme Court, then the same shall be severable from and shall not affect the districts held to meet federal constitutional standards (except as may be found necessary to the correction of unconstitutionalities).

SECTION 5. This act shall take effect and be in force from and after its passage.

APPROVED: APRIL 8, 1975

APPENDIX I

Senate Bill No. 2976

Chapter No. 484

AN ACT TO BRING FORWARD SECTION 5-1-3, MISSISSIPPI CODE OF 1972, TO REAFFIRM AND RE-ESTABLISH LEGISLATIVE INTENT AND TO DELINEATE THE REASONS THEREFOR; TO DIRECT THE ATTORNEY GENERAL TO SUBMIT THE REAPPORTIONMENT PROPOSAL TO THE UNITED STATES DISTRICT COURT; AND FOR RELATED PURPOSES.

WHEREAS, in the case of *Mahan* vs. *Howell*, 410 U.S. 315 (1973), the Supreme Court of the United States enunciated the most recent guidelines for the reapportionment of state legislatures in compliance with the one-person, one-vote requirement of the United States Constitution and the prior decisions of that court on the subject, in which it was held that in reapportionment a state may pursue the rational objective of preserving the integrity of its political subdivision lines; and

WHEREAS, from the attainment of statehood in 1817, Mississippi has structured the reapportionment of its Legislature on county lines, there being no instances of the election of senators from a district smaller than a county. No district has ever been established by combining parts of one (1) county with portions of others because the county is the basic, traditional governmental unit upon which the state is organized and through which such primary functions as courts, elections and taxation have been conducted; and

WHEREAS, the Legislature recognizes its primary responsibility, as recently emphasized by the Supreme Court in *Chapman* vs. *Meier*, (January 27, 1975) to effectuate legislative reapportionment in compliance with the requirements of the United States Constitution; and

WHEREAS, the Constitution of Mississippi fixed the number of Senators at fifty-two (52), to be chosen from a population of two million two hundred sixteen thousand nine hundred twelve (2,216,912) (1970 census), or one (1) Senator per forty-two thousand six hundred thirty-four (42,634) persons; NOW, THEREFORE,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 5-1-3, Mississippi Code of 1972, is amended as follows:

5-1-3. The number of Senators shall be fifty-two (52) and shall be elected from thirty-three (33) districts, composed of the counties and with district representation as follows:

District Number	County or Counties	Number of Senators
1	DeSoto, Lafayette and Marshall	2
2	Benton, Pontotoc and Union	1
3	Alcorn and Tippah	1
4	Itawamba, Monroe, Prentiss and Tishomingo	2
5	Lee	1
6	Chickasaw, Clay and Lowndes	2
7	Calhoun, Choctaw, Montgomery and Webster	1
8	Panola and Yalobusha	1
9	Quitman, Tate and Tunica	1
10	Coahoma	1
11	Bolivar and Sunflower	2
12	Humphreys and Washington	2
13	Leflore	1
14	Grenada and Tallahatchie	1

15	Holmes, Issaquena, Madison, Sharkey and Yazoo	2
16	Attala, Carroll and Leake	1
17	Neshoba and Winston	1
18	Noxubee and Oktibbeha	1
19	Kemper and Lauderdale	2
20	Newton and Scott	1
21	Rankin	1
22	Hinds	5
23	Warren	1
24	Claiborne, Copiah, Lincoln and Simpson	2
25	Adams, Amite, Franklin, Jefferson and Wilkinson	2
26	Pike and Walthall	1
27	Covington, Jefferson Davis, Jones, Lawrence and Marion	3
28	Clarke, Jasper and Smith	1
29	George, Greene, Perry and Wayne	1
30	Forrest, Lamar and Stone	2
31	Hancock and Pearl River	1
32	Harrison	3
33	Jackson	2

In each senatorial district electing more than one (1) Senator, each Senator shall be nominated and elected by posts.

In District 27, Jones County shall nominate and elect the Senator to Post 1. The remaining counties shall nominate and elect the Senator to Post 2. Post 3 shall be nominated and elected by the district at large.

SECTION 2. To minimize confusion in the electoral process, in all districts for the election of more than one (1) Senator, each Senator shall be nominated and elected by posts in order that the voter may have a clear-cut choice for each seat to be chosen from a specific group of candidates (*Chapman* vs. *Meier*, Supreme Court decision).

SECTION 3. The United States District Court (three-judge) having reserved jurisdiction over the matter of legislative reapportionment in this state in litigation presently pending, and this being the year for the election of all members of the Mississippi Legislature the Attorney General is directed to file this act with the clerk of said court, with appropriate prayers for a determination of the constitutionality of the same.

SECTION 4. If any part of this act should be held to be unconstitutional by said court or by the United States Supreme Court, then the same shall be severable from and shall not affect the districts held to meet federal constitutional standards (except as may be found necessary to the correction of unconstitutionalities).

SECTION 5. This act shall take effect and be in force from and after its passage.

APPROVED: APRIL 7, 1975

CONNOR ET AL. *v.* WALLER, GOVERNOR OF MISSISSIPPI, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

No. 74–1509. Decided June 5, 1975.

The District Court's error in holding that certain Mississippi statutes do not have to be submitted for clearance pursuant to § 5 of the Voting Rights Act of 1965, and its consequent error in deciding the constitutional challenges to the statutes based on racial discrimination claims, require reversal; but this is without prejudice to that court's authority to entertain an appropriate proceeding to require that the 1975 elections be conducted pursuant to a court-ordered reapportionment plan.

— F. Supp. —, reversed.

PER CURIAM.

This is an appeal from a judgment entered May 22, 1975, by a three-judge court for the Southern District of Mississippi. The judgment is reversed. The District Court erred in holding that House Bill No. 1290 and Senate Bill No. 2976, Mississippi Laws, 1975, Regular Session, are not legislative enactments required to be submitted pursuant to § 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 84 Stat. 315, 42 U. S. C. § 1973c. *Georgia* v. *United States,* 411 U. S. 526 (1973). Those Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5. The District Court accordingly also erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination. *Perkins* v. *Matthews,* 400 U. S. 379 (1971); *Allen* v. *State Board of Elections,* 393 U. S. 544 (1969).

This reversal is, however, without prejudice to the authority of the District Court, if it should become ap-

propriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell,* 410 U. S. 315 (1973); *Connor* v. *Williams,* 404 U. S. 549 (1972); and *Chapman* v. *Meier,* 420 U. S. 1 (1975).

Reversed.

MR. JUSTICE MARSHALL, concurring.

I am of the opinion that the *per curiam* in this case should be made clear by adding a paragraph similar to the concluding paragraph of our opinion in *Georgia* v. *United States,* 411 U. S. 526, 541 (1973). Therefore, I would add the following paragraph in this case:

> "The case is remanded with instructions that any future elections in Mississippi under House Bill No. 1290 and Senate Bill No. 2976, Mississippi Laws, 1975, Regular Session, be enjoined unless and until the State, pursuant to § 5 of the Voting Rights Act of 1965, tenders to the Attorney General a plan to which he does not object, or obtains a favorable declaratory judgment from the District Court for the District of Columbia."

MR. JUSTICE DOUGLAS took no part in the consideration or decision of this appeal.